

JOSEPH R. REISINGER

ATTORNEY AT LAW

700 FIRST EASTERN BANK BUILDING

WILKES-BARRE, PA 18701

RECORDATION NO. 13201

(717) 823-0191

JUL 24 1981 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

July 22, 1981

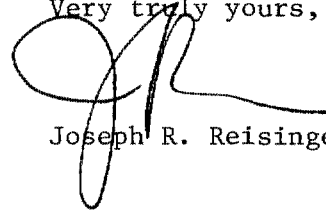
Secretary of the Interstate Commerce Commission  
Washington, D. C. 20423

Re: M. R. Flynn, Debtor  
First Eastern Bank, N. A., Secured Party

Gentlemen:

Enclosed please find an original and two executed copies, which have been acknowledged, of a Security Agreement between M. R. Flynn, as debtor, and First Eastern Bank, N. A., as creditor, together with our check for Fifty (\$50.00) Dollars to cover your recordation fee.

Very truly yours,



Joseph R. Reisinger

JRR:cb

Enclosures

RECEIVED  
JUL 24 10 29 AM '81  
I.C.C.  
FEE OPERATION GR.

# 1-205A021

No. 500

Date.....

Fee \$...50.00

ICC Washington, D. C.

RECORDATION NO. 13201  
JUL 24 1981 - 10 25 AM  
INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

SECURITY AGREEMENT dated the 16TH day of JANUARY, 1981, (hereinafter called "This Agreement"), between the party executing this Agreement as Debtor (hereinafter called the "Debtor"), and FIRST EASTERN BANK, N.A. (hereinafter called the "Secured Party").

The Debtor has requested that the Secured Party make a loan to the Debtor (hereinafter called the "Loan"), evidenced by a promissory note issued or to be issued by the Debtor (hereinafter called the "Note"), payable to the order of the Secured Party. The proceeds of the Loan will be used by the Debtor to pay a portion of the purchase price of the units of railroad equipment described in Schedule "A" attached hereto, which will be leased initially to Lessee listed on Exhibit "B", and may be leased to certain other short-line railroads, between the Lessee and Rex Leasing, Inc., (hereinafter called the "Agent"), as agent for the Debtor under a Management Agreement (hereinafter called the "Management Agreement"), in the form attached as Exhibit "C".

In order to induce the Secured Party to make the Loan, the Debtor has agreed to secure to the extent hereinafter set forth, (a) the payment in full of principal of and interest on the Note when and as the same shall become due and payable whether at the stated date for the payment thereof, by acceleration, by notice of prepayment or otherwise, and (b) the due and punctual payment of all other monetary obligations of the

Debtor to the Secured Party pursuant to the Note and this Agreement (such principal, interest and obligations being hereinafter called the "Obligations").

Accordingly, the Debtor and the Secured Party hereby agree as follows:

ARTICLE ONE  
GRANT OF SECURITY

Section 1.01. Grant of Security. The Debtor does hereby transfer, assign, grant, bargain, sell, convey, hypothecate and pledge to the Secured Party, its successors and assigns, a security interest in all right, title and interest of the Debtor which presently exists or which may hereafter arise, in, to and under the following (all of the properties in which the Secured Party is hereby granted a security interest being hereinafter called collectively the "Collateral"):

(a) The units of railroad equipment described in Schedule "A" attached hereto, together with (i) any and all accessories, equipment, parts and improvements now or at any time hereinafter attached or appertaining to such units, except such thereof as remain the property of the Lessee under the Lease, and (ii) any and all substitutions, renewals and replacements for, and any additions, accessions and accumulations to, any and all of such units (such units of railroad equipment, together with such accessories, equipment, parts, improvements, substitutions, replacements, additions, accessions and accumulations being

hereinafter called collectively the "Units" and severally a "Unit");

(b) The Lease of Equipment described in Schedule "B" attached hereto and any other Lease pursuant to which any Unit shall at any time be leased, together with any and all schedules and exhibits thereto (all such Leases, together with such schedules and exhibits, being hereinafter called collectively the "Lease"; and all lessees thereunder, including without limitation the lessee set forth in Schedule "B" attached hereto, being hereinafter called collectively the "Lessee"), including without limitation the right to receive and collect all rental, casualty value payments, insurance proceeds, condemnation awards and other payments now or hereafter payable to the Debtor pursuant to the Lease; and

(c) To the extent not included in the next preceding clause, all rental, issues, income and profit from the Units.

Section 1.02. Limitations of Security Interest. The security interest granted by the Debtor in and to the Collateral is subject to, (a) the Lessee's rights of possession, use and enjoyment set out in the Lease, and (b) the Agent's right to compensation set out in ¶6 of the Management Agreement.

Section 1.03. Duration of Security Interest. The security interest granted by the Debtor in and to the Collateral shall remain in effect at all times until the Debtor shall pay or cause to be paid all Obligations and shall observe and perform

all the terms, conditions and agreements contained in this Agreement and the Note.

## ARTICLE TWO

### REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01. Representations and Warranties. The Debtor represents and warrants to the Secured Party that, (a) the Debtor is the record and beneficial owner of all right, title and interest in the Collateral free and clear of all liens, charges and encumbrances, except for the rights of the Lessee under the Lease and of the Agent under the Management Agreement, (b) the Debtor has full right and power to grant a security interest in the Collateral to the Secured Party free of any contractual provision binding on the Debtor or his assets, and (c) without limiting the foregoing, there is no financing statement or other filed or recorded instrument in which the Debtor is named and which the Debtor has signed or permitted to be filed or recorded covering any of the Collateral (except the financing statements or other instruments filed or to be filed in respect of the security interest provided herein.

Section 2.02. Covenants. The Debtor unconditionally covenants and agrees with the Secured Party as follows:

(a) The Debtor will promptly cause this Security Agreement and each supplement or amendment hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The

Debtor will do, execute, acknowledge, deliver, file, register and record all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the better assuring, convening, assigning and confirming unto the Secured Party all of the Collateral or property intended so to be, whether now owned or hereafter acquired;

(b) The Debtor shall not encumber or grant a security interest in or file a financing statement covering the Collateral, or permit any of the foregoing, without the prior written consent of the Secured Party, except as required hereunder;

(c) The Debtor will, at no expense to the Secured Party, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest in the Collateral herein provided for; without limiting the foregoing, the Debtor covenants and agrees that it will, pursuant to ¶7(a) of the Management Agreement, direct the Agent to make all payments of rental and other sums payable to the Debtor under the Lease and the Management Agreement directly to the Secured Party or as the Secured Party may otherwise direct;

(d) The Debtor will not sell, mortgage, transfer or assign (other than to the Secured Party hereunder) its interest in the Units or in any part thereof or in any amount to be received by it from the use or disposition of the Units;

(e) Subject to the rights of the Lessee under the

Lease, the Debtor will cause the Units and each and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, and will from time to time make or cause to be made all necessary and proper repairs, renewals and replacements so that the value and efficiency of such property shall not be impaired;

(f) The Debtor will not, and will not permit or cause the Agent to, declare or exercise any of the remedies of the lessor under, or accept a surrender of, or offer or agree to any assignment, termination, modification or surrender of, the Lease (except as otherwise expressly provided in the Management Agreement), or by affirmative act consent to the creation or existence of any security interest or other lien in or on the Lease or any part thereof;

(g) The Debtor will not, and will not permit or cause the Agent to, receive or collect any rental payment under the Lease in respect of any of the Units, prior to the date for payment thereof provided for by the Lease, or assign, transfer or hypothecate (other than to the Secured Party hereunder and to the Agent under the Management Agreement) any rent payment then due or to accrue in the future under the Lease in respect of any of the Units;

(h) The Debtor will from time to time duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges lawfully imposed upon or against the Collateral or any part thereof, and will not suffer to exist

any mechanics', laborers', statutory or other lien on the Collateral or any part thereof; provided, however, that nothing herein contained shall be deemed to require the Debtor to pay any tax, assessment, charge or lien, or any claim or demand of mechanics, laborers or others, prior to the due date thereof, or to require the Debtor to pay or discharge any tax, assessment, lien, claim or charge (whether or not due or delinquent) the validity or amount of which is being contested in good faith by appropriate proceedings and which has been adequately reserved against; provided, however, that the Debtor will pay or discharge such tax, assessments, lien, claim or charge if seizure of the Collateral is imminent;

(i) The Debt will give the Secured Party prompt written notice of any event or condition constituting an Event of Default under the Lease if the Debtor has actual knowledge of such event or condition;

(j) The Debtor will at its own expense duly comply with and perform all the covenants and obligations of the Debtor under the Lease and will at its own expense seek to cause the Lessee to comply with and observe all the terms and conditions of the Lease and, without limiting the foregoing, at the request of the Secured Party, the Debtor will at its own expense take such action with respect to the enforcement of the Lease, and the duties and obligations of the Lessee thereunder, as the Secured Party may from time to time direct. Notwithstanding anything to the contrary contained in this Security Agreement, so long as



Debtor is not in default hereunder, Debtor shall have the right, without Secured Party's prior consent, to amend, modify and terminate the Lease and to settle, adjust, compound and compromise any claims of the Debtor against the Lessee thereunder;

(k) The Debtor will permit and will cause the Agent to permit Secured Party to examine its books and records with respect to the Collateral during regular business hours upon reasonable notice to the Debtor;

(l) The Debtor shall not change, or permit to be changed, the identifying letters and numbers of the Units from such identifying letters and numbers of the Units from such identifying letters and numbers set forth in Schedule "A" hereto, except in accordance with a statement of new numbers to be substituted therefor which previously shall have been delivered to the Secured Party and which shall be filed and recorded by the Debtor in like manner as this Agreement; and

(m) The Debtor shall not lease the Units, or permit the Units to be leased, to any railroad, or pursuant to any lease of equipment, other than the railroad and the Lease set forth in Schedule "B" hereto, except in accordance with a statement of new railroad or lease of equipment, as appropriate, which previously shall have been delivered to the Security Party and which shall be filed and recorded by the Debtor in like manner as this Agreement.

### ARTICLE THREE

#### APPLICATION OF PROCEEDS OF CERTAIN PREPAYMENTS

Without regard to whether an Event of Default under Article IV hereof has occurred and is continuing, the Debtor agrees that it will pay over to Secured Party all moneys ("Settlement Moneys") paid to it pursuant to the Lease as settlement for the loss, theft, destruction or damage beyond economical repair of any Unit or Units leased thereunder. The Secured Party shall apply each payment of settlement moneys on the next succeeding date on which interest is payable to the prepayment of principal of the Note. Such prepayment of principal shall be applied in inverse order of principal installments coming due on the Note. From and after the date hereof the Debtor shall promptly transmit to the Secured Party any notice or information it receives concerning loss, theft, destruction or damage beyond economical repair to Units covered by the Lease requiring settlement payment under the Lease. With respect to all Units for which the Secured Party has received settlement moneys paid to the Debtor as required by the Lease, the Secured Party shall execute and deliver to the Debtor, if requested, at Debtor's expense, a release of the lien of this Security Agreement with respect to such Unit or Units.

## ARTICLE FOUR

### EVENTS OF DEFAULT; REMEDIES

Section 4.01. Events of Default. The happening of any of the following events (hereinafter called "Events of Default") shall constitute a default hereunder:

(a) Default shall be made in the payment of principal of, or interest on, the Note when and as the same shall become due and payable, whether at the stated date for the payment thereof, by acceleration or by notice of prepayment or otherwise;

(b) Any representation or warranty made herein or in any certificate delivered in connection herewith shall prove to be false or misleading in any material respect;

(c) Default shall be made in the due observance or performance of any covenant or agreement to be observed or performed by the Debtor pursuant to the terms hereof and such default shall continue unremedied, after written notice to Debtor, for thirty (30) days;

(d) Final judgment for the payment of money in excess of an aggregate of \$25,000 shall be rendered against the Debtor and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed;

(e) The Debtor shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of any of his property, (ii) admit in writing his inability to pay his

debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if action shall be taken by the Debtor for the purpose of effecting any of the foregoing; or

(f) An order, judgment or decree shall be entered, without the application, approval or consent of the Debtor by any court of competent jurisdiction, appointing a receiver, trustee or liquidator of the Debtor and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) days; then, in such case, the Secured Party may, by notice in writing delivered to the Debtor, declare the unpaid principal of the Note to be due and payable, and thereupon the same, together with accrued interest thereon, shall become and be immediately due and payable.

Section 4.02. Remedies. In case of the happening of any Event of Default, the Secured Party may, subject to the Lessee's rights of possession, use and enjoyment set out in the Lease and the Agent's right to compensation set out in ¶6 of the Management Agreement, by its agents enter upon the premises of the Lessee (or other party having acquired the possession or use

of the Units) where any of the Units may be and take possession of all or any part of the Units and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Units and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, incentive per diem, mileage or other charges of any kind earned by the Units, and may lease or otherwise contract for use of any of the Units; or the Secured Party may, with or without retaking possession, sell any of the Units, free from any and all claims of the Debtor at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale for cash or upon credit in the discretion of the Secured Party, and may proceed otherwise to enforce its rights, all subject to any mandatory requirements of law applicable thereto. Upon any such sale, the Secured Party may itself bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Secured Party may specify, or as may be required by law, and without gathering at the place of sale the Units to be sold, and in general in such manner as the Secured Party may determine.

In case of the happening of an Event of Default, the Secured Party also may, subject to the Lessee's rights of possession, use and enjoyment set out in the Lease and the Agent's right to compensation set out in ¶6 of the Management Agreement, proceed to exercise in respect of the Lease and the property covered thereby and the duties, obligations and liabilities

ties of the Lessee thereunder all rights, privileges and remedies in said Lease or by applicable law permitted or provided to be exercised by the Debtor, including but not limited to the right to receive and collect all rent and other moneys due or to become due thereunder and may exercise all such rights and remedies either in the name of the Secured Party or in the name of the Debtor for the use and benefit of the Secured Party. The Secured Party may sell the rentals reserved under the Lease, and all right, title and interest of the Secured Party with respect thereto, at public auction to the highest bidder and either for cash or on credit, and the Secured Party is to give the Debtor prior written notice of the time and place of holding any such sale, and provided always that the Secured Party shall also comply with any applicable mandatory legal requirements in connection with such sale.

No such taking of possession, withdrawal, lease or sale of the Collateral or any part thereof by the Secured Party shall be a bar to the recovery by the Secured Party from the Debtor of any of the Obligations then or thereafter due and payable, and the Debtor shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Collateral, shall be sufficient for the discharge and payment in full of all the Obligations.

Any sale or sales pursuant to the provisions hereof, whether under the power of sale granted hereby or pursuant to any legal proceedings, shall operate to divest the Debtor of all

right, title, interest, claim and demand whatsoever, either at law or in equity, of, in and to the Collateral so sold, and shall be free and clear of any and all rights of redemption by, through or under the Debtor, the Debtor hereby covenanting and agreeing that it will not at any time insist upon or plead, or take the benefit or advantage of or from, any law now or hereafter in force providing for a valuation or appraisal of the Collateral prior to any sale or sales thereof or providing for any right to redeem the Collateral or any part thereof. The receipt by the Secured Party, or by and person authorized under any judicial proceeding to make any such sale, shall be a sufficient discharge to any purchaser of the Collateral, or any part thereof, sold as aforesaid; and no such purchaser shall be bound to see to the application of such purchase money, or be bound to inquire as to the authorization, necessity or propriety of any such sale. In the event at any such sale the holder or holders of the Note is or are the successful purchaser or purchasers, such holder or holders of said Note shall be entitled, for the purpose of making settlement or payment, to use and apply said Note by crediting thereon the amount apportionable and applicable thereto out of the net proceeds of such sale.

Section 4.03. Application of Proceeds. If the Secured Party shall exercise any of the powers conferred upon it by Sections 4.01 and 4.02 hereof, all payments made by the Debtor to the Secured Party, and the proceeds of any judgment collected from the Debtor by the Secured Party, and the proceeds of every

sale or lease by the Secured Party of all or any of the Collateral, together with any other sums which may then be held by the Secured Party under any of the provisions hereof, shall be applied by the Secured Party to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Secured Party in accordance with the provisions of this Agreement; and (b) of the interest then due, and of the principal of the Note, whether or not the Note shall have matured by its terms, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest. In the event that, after applying all such sums of money realized by the Secured Party as aforesaid, there shall remain any amount due to the Secured Party under the provisions hereof, the Debtor agrees to pay the amount of such deficit to the Secured Party. In the event that, after applying all such sums of money realized by the Secured Party as aforesaid, there shall remain a surplus in the possession of the Secured Party, such surplus shall be paid to the Debtor.

Section 4.04. Obligations Not Affected by Remedies. No retaking of possession of the Units by the Secured Party, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Debtor or in respect of the Collateral or any part thereof on the part of the Secured Party, nor any delay or indulgence granted to the Debtor by the Secured Party, shall affect the obligations of the Debtor hereunder or



under the Note.

Section 4.05. Remedies Cumulative; Subject to Mandatory Requirements of Law. The remedies in this Agreement provided in favor of the Secured Party shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity; and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Debtor.

#### ARTICLE FIVE

##### EVENTS OF TERMINATION

In the event that any Unit shall cease to be subject to the Lease from any cause whatsoever (other than as provided in Article III hereof) for a period greater than sixty (60) consecutive days (hereinafter called an "Event of Termination"), the Debtor shall, within thirty (30) days after receipt of notice of such Event of Termination, deposit with the Secured Party an amount equal to the Termination Value (as hereinafter defined) of such Unit. The Termination Value of a Unit shall mean the amount which bears the same ratio to the original purchase price of such Unit (including the portion of such purchase price paid with proceeds of the Loan) as the principal amount of the Note which is outstanding on the date such deposit is made (without giving effect to any prepayment then or theretofore made) bears to the

original principal amount of the Note. Any amounts so received by the Secured Party shall be applied as required as in the case of a prepayment under Article III hereof.

## ARTICLE SIX

### APPLICATION OF RENTALS AND CERTAIN OTHER AMOUNTS

Section 6.01. Application of Rentals. The amounts from time to time received by the Secured Party which constitute payment of rentals under the Lease shall be applied in the following order of priority: (a) to the payment of the installments of principal of and interest on the Note which have matured on or prior to the date such rentals are received by the Secured Party; and (b) the balance, if any, of such rentals shall be paid to or upon the order of the Debtor not later than the first business day following the receipt thereof.

Section 6.02. Insurance Proceeds. Any amounts received by the Secured Party from time to time which constitute proceeds of casualty insurance maintained in respect of the Units shall be held by the Secured Party as part of the Collateral and shall be applied by the Secured Party from time to time to any one or more of the following purposes:

(a) So long as no Event of Default has occurred and is continuing, the proceeds of such insurance shall, if the Unit is to be repaired, be released to the Agent in reimbursement for expenditures made for such repair, upon receipt by the Secured Party of a certificate of an authorized officer of the

Agent to the effect that any damage to such Unit in respect of which such proceeds were paid has been fully repaired; and

(b) If the insurance proceeds shall not have been released pursuant to the preceding subsection (a) within one hundred eighty (180) days from the receipt thereof by the Secured Party, such insurance proceeds shall be applied by the Secured Party (i) first, to prepay the Note, and (ii) second, the balance, if any, shall be released to or upon the order of the Debtor on the date of such prepayment of the Note.

#### ARTICLE SEVEN

#### MISCELLANEOUS

Section 7.01. Power of Attorney. The Debtor hereby constitutes and appoints the Secured Party the attorney-in-fact of the Debtor with full power of substitution for the purposes of carrying out the provisions of this Agreement, and in its name, place and stead to ask, demand, collect, receive, sue for and give acquittance for any and all rents, income and other sums which are assigned hereunder with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and in the discretion of the Secured Party to file any claim or take any other action, either in its own name or in the name of the Debtor or otherwise, which the Secured Party may deem necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such rents and other sums and the security intended to be afforded hereby.

Section 7.02. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All warranties, covenants and agreements by or on behalf of the Debtor which are contained in this Agreement and the Note shall bind and inure to the benefit of the respective successors and assigns of the Secured Party.

Section 7.03. Modification, Amendment or Waiver. No modification, amendment or waiver of any provision of this Agreement, or consent to any departure by the Debtor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Secured Party. No notice to or demand on the Debtor in any case shall entitle it to any other or further notice or demand in the same, similar or other circumstances. Neither any failure nor any delay on the part of the Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

Section 7.04. Severability. In the event any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 7.05. Notices. All demands, notices and communications hereunder shall be in writing and shall conclusively

be deemed to have been received by a party hereto and to be effective on the day on which delivered to such party at its address set forth below (or at such other address as such party shall specify to the other party by a notice in accordance with the terms hereof), or, if sent by Registered Mail, on the third business day after the date on which mailed, addressed to such party at such address:

(a) If to the Debtor, at his address set forth next to his signature at the foot of this Agreement; and

(b) If to the Secured Party, at its address.

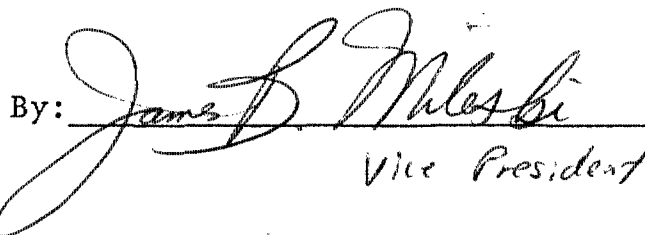
WITNESS the due execution hereof the day and year first above written.

Debtor:

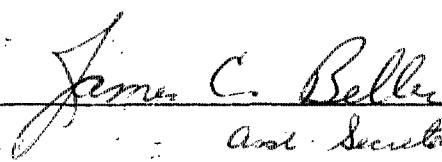


Creditor:

FIRST EASTERN BANK, N.A.

By:   
Vice President

Attest:

  
Asst. Secretary

<u>Manufacturer</u>	<u>Number of Cars</u>	<u>Description</u>	<u>Reporting Marks</u>
F M C	1	4,700 cubic foot capacity, 100 ton truck steel-covered hopper car	RRRX 2117
M I L	1	"	RRRX 1082

Lessee

FARMLAND INDUSTRIES, INC.

Date of Lease Agreement  
with Rex Leasing Co.  
as Agent for Lessors

December 20, 1979  
Lease of RRRX 1082

[This Agreement is Subject to Arbitration]

Owner: M. RUTLEDGE FLYNN**MANAGEMENT AGREEMENT**

THIS AGREEMENT made by and between Rex Leasing, Inc., a New Jersey corporation (hereinafter called "Rex"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Covered Hopper Railcar Purchase Contract (the "Purchase Contract") with Rex, agreed to purchase the number of covered hopper railcars set forth in Exhibit A attached hereto and incorporated herein by reference (such covered hopper railcars, which shall be identified as provided in Section 1, being hereinafter referred to as the "Cars");

WHEREAS, Rex engages in the business of managing railcars for railcar owners, and Owner desires to retain Rex as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

WHEREAS, initially each Car, upon its delivery to the lessee, will be subject to a lease agreement or agreements (the "Lease") with a shipper or railroad; and

WHEREAS, Rex intends to manage covered hopper railcars similar in most respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which Rex will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses of all cars managed by Rex under Rex Leasing Covered Hopper Railcar Management Program 1980 (the "Management Program"), all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and Rex, intending to be legally bound, hereby agree as follows:

**1. Engagement of Rex.**

Subject to all the terms and conditions set forth herein, Owner hereby engages Rex as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and Rex accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof. Upon identification of the Cars by insertion by Rex in Schedule 1 to the Purchase Contract of the name of the manufacturer of the Cars, the number of Cars, the description of the Cars and the reporting marks and serial numbers of the Cars, Rex shall list the name of the manufacturer of the Cars, the number of Cars, the description of the Cars and the reporting marks and the serial numbers of the Cars in Exhibit A hereto.

**2. Term.**

(a) The term of this Agreement and the agency created hereby shall commence on the execution of this Agreement by both parties and, unless terminated earlier pursuant to this Section 2, shall continue for a period of 15 years following delivery under the Lease of the last of the Cars to be delivered under the Lease.

(b) Anything herein to the contrary notwithstanding, except for Sections 10, 11(a) and 11(c) and 16, which shall remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement:

- (i) shall terminate with respect to any Car which is sold, foreclosed upon, lost or totally destroyed as of the date that such sale or foreclosure is consummated or such Car is lost or destroyed.
- (ii) shall terminate if Rex shall dissolve or institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of bankruptcy proceedings against it or shall file a petition or answer or consent seeking reorganization under the Bankruptcy Act of the United States or shall consent to the filing of any such petition or the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or all or a substantial part of its property or shall make an assignment for the benefit of creditors or shall



admit in writing its inability to pay its debts generally as they become due or if there shall have continued undischarged or unstayed for 90 days an order of a court of competent jurisdiction adjudging Rex a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of Rex under the Bankruptcy Act or any similar Federal or State law or appointing a receiver, trustee or assignee in bankruptcy or insolvency of Rex or all or a substantial part of its property or winding up or liquidating the affairs of Rex on the application of any creditor in any insolvency or bankruptcy proceedings or other creditor's suit, which termination shall be effective as of the 5th day following the giving of written notice of such termination.

- (iii) may be terminated by Owner, in Owner's sole discretion, if there shall have occurred an event of default under any instrument covering a debt obligation of Rex-Noreco, Inc., a New Jersey corporation and owner of all of the outstanding capital stock of Rex (provided that, if such event of default arises from a failure to pay an obligation when due or to observe a financial covenant or from an act indicating the insolvency or bankruptcy of Rex-Noreco, Inc., then Owner's right to terminate shall exist only so long as such event of default has not been cured or waived; and, if such event of default does not arise from a failure to pay an obligation when due or to observe a financial covenant or from an act indicating the insolvency or bankruptcy of Rex-Noreco, Inc., then such right to terminate shall exist only so long as the lender under the agreement under which such event of default has occurred has accelerated payment of such debt obligation and such default has not been cured or waived).

(c) Except for Sections 10, 11(d) and 16, which shall remain in effect notwithstanding the termination of this Agreement pursuant to this Section 2(c), this Agreement may be terminated by Owner, in Owner's sole discretion,

- (i) by the giving of written notice of such termination within 30 days after the effective date of any increase in the compensation payable to Rex under Section 6(a); or
- (ii) if for any period of twelve consecutive months commencing after the month in which the last car to be managed under the Management Program is delivered under the lease initially covering such car the following fraction exceeds 1/12:

$$\frac{\text{number of car days off lease during such twelve-month period}}{\text{number of car days during such twelve-month period}}$$

For the purpose of this Section 2(c)(ii), the "number of car days off lease during such twelve-month period" shall mean the sum for each car managed under the Management Program of the number of days during such twelve-month period on which such car was not subject to a lease, or was subject to a lease or other arrangement that provided for rental or other fees at a rate lower than rental rates generally prevailing for leases of a similar term for railcars similar to such car at the time such lease or other arrangement was entered into; but shall not include (y) any day after a lease covering the car has expired or otherwise terminated but prior to delivery of such car to the next lessee thereof and the commencement of accrual of rentals under such lease, if such car is then subject to a successor lease that has been signed and delivered and provides for the delivery of cars subject thereto as soon as may be reasonably practicable, and (z) any day on which there is a "force majeure event". For the purpose of this Section 2(c)(ii), "force majeure event" shall mean any delay caused by any alterations, modifications, improvements or additions to the car of the type referred to in Section 7(c); the failure of Owner to consent to such alterations, modifications, improvements or additions; any acts of God; acts of a public enemy; riot; civil commotion; storms; fire; floods; earthquakes; strikes; lockouts; material shortages; inability to procure labor, materials or supplies after diligent efforts to do so; delays in the delivery of materials or supplies; defaults on the part of any repair facility, repairman, contractor, subcontractor, supplier or materialman; and other events or circumstances of a similar nature beyond Rex's reasonable control. The "number of car days during such twelve-month period" shall mean the sum for each car managed under the Management Program of the number of days during the same twelve-month period as is used in computing the numerator on which such car was managed under the Management Program.

Within 60 days after the end of any such 12-month period, Rex shall notify Owner of Owner's right to terminate this Agreement and such termination shall be effective only if written notice thereof shall be given to Rex within 45 days of notice to Owner.

If Owner terminates this Agreement pursuant to this Section 2(c), Rex may, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d), the transfer to Rex of all of Owner's right, title and interest under the Lease or any other lease to which a Car may then be subject, without recourse, withdraw the Car from such lease and substitute thereunder a Car identical to the Car so withdrawn.

(d) Except for Sections 10, 11(d) and 16, which shall remain in effect notwithstanding the termination of this Agreement pursuant to this Section 2(d), this Agreement may be terminated by Rex, in Rex's sole discretion, if Owner is in default for a period of 90 days after notice and demand from Rex in the payment of obligations pursuant to Section 7(b) if at the date of such notice and demand and thereafter during such 90-day period the total of Owner's obligations so owed equals or exceeds three times the amount of the aggregate monthly management fee for which Owner is responsible for the month in which such notice and demand is given; and Rex may also, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d) the transfer to Rex of all of Owner's right, title and interest under the Lease or any other lease to which the Cars may then be subject, without recourse, withdraw the Cars from such lease and substitute thereunder cars identical to the Cars so withdrawn.

(e) Notwithstanding any termination of this Agreement, whether upon the expiration of 15 years after delivery under the Lease of the last of the Cars to be delivered under the Lease or pursuant to Section 2(b), 2(c) or 2(d) Rex shall continue to be obligated to collect all rental payments, time and mileage charges and other sums (including insurance benefits, payments under manufacturers' warranties covering the Cars or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars as to which this Agreement has been terminated, due for or with respect to periods prior to such termination of this Agreement.

(f) At least 6 months prior to the expiration of the term of this Agreement on account of the passage of the period of 15 years after Rex's acceptance of the last Car to be so accepted, but in no event more than 12 months prior to such expiration, Rex shall give to Owner written notice of such pending expiration of this Agreement, which notice shall state whether Rex proposes to negotiate a new agreement for the management of the Cars and, if Rex does so propose, the terms of such new agreement which it proposes.

(g) Not earlier than 9 months and not later than 6 months prior to the effective date of any anticipated change in the aggregate monthly management fee payable to Rex under Section 6(a), Rex shall give Owner written notice of the effective date of the next increase in such fee and of the approximate amount by which such fee would be increased pursuant to Section 6(a) if such increase were effective as of the date of such notice.

(h) Upon termination of this Agreement, Rex shall cooperate with Owner either to sell or otherwise dispose of the Cars or to effect an orderly transition of the management or use of the Cars to any new manager or any new lessee thereof, as the case may be (it being understood that any costs of constructive or physical redelivery of Cars to Owner will be borne by Owner).

### **3. Duties of Rex.**

In consideration of the compensation to be paid to Rex by Owner pursuant to Section 6(a), subject to any provisions herein requiring Rex to obtain the consent of Owner, and subject to the agreement of Owner to reimburse Rex pursuant to Section 7, Rex shall, and is hereby authorized to, provide and perform the services on behalf of Owner and to take the action described below during the term of this Agreement:

(a) Immediately upon execution of this Agreement, or as soon thereafter as reasonably practicable, accept and take delivery of the Cars and, where applicable, import them into the United States as agent and attorney for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Use its best efforts to keep such Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in the industry and using its best efforts to take such steps as may, based on its good faith judgment be desirable and prudent to insure that all obligations and duties arising under such leases, whether of lessors or lessees, are performed or complied with in an orderly and timely fashion.

(c) In the event that the Cars are not leased to a railroad, use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the rules of the Association of American Railroads ("AAR") as required by the terms of any lease or otherwise.

(d) Take such steps as Rex may, based on its good faith judgment, deem desirable, prudent and in the best interests of Owner to collect or cause to be collected all rental payments and time and mileage charges payable with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided. In determining the amount of such time and mileage charges, Rex shall be entitled to rely upon reports received from railroads or other persons upon whose tracks the Cars have traveled and lessees of the Cars and other cars managed under the Management Program after such investigation, if any, as Rex in its good faith judgment shall deem reasonable.

(e) Terminate leases and recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed under the leases or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of Rex exercised in good faith; and institute and prosecute legal proceedings in the name of Owner as is permitted by applicable laws in order to terminate such leases and/or recover possession of the Cars and enforce all rights of Owner with respect thereto; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such leases.

(f) Review all maintenance and repair costs incurred or to be incurred by the Cars, use its best efforts to ensure that only necessary or appropriate maintenance or repair work at the proper charges therefor is performed and cause the Cars to be maintained in good condition, which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, Interstate Commerce Commission ("ICC") or U.S. Department of Transportation ("DOT"), (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between lessee and Rex, as agent for Owner, and (iii) any standard set by any insurance policy under which any of the Cars shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(c) shall be made without the consent of Owner, which consent shall be deemed to have been granted if, within thirty days of Rex giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given Rex notice that Owner objects to the making of such alteration, modification, improvement or addition.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with Rex, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and bodily injury, (ii) loss of or damage to the Cars and (iii) loss of revenues with respect to the Cars; provided, however, that if Rex effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that, if Rex determines that the cost of insurance described above is unreasonably high, or cannot be obtained, Rex need not place or acquire such insurance and shall so notify Owner.

(h) Pay on behalf, and in the name, of Owner all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in Rex's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, and, where Rex deems such action prudent and desirable, seek rulings and determinations of the Internal Revenue Service ("IRS") with respect to Federal tax issues affecting the ownership, use and/or operations of the Cars, all such actions to be in the name of Owner.

(i) Make all efforts reasonable under the circumstances to monitor and record and cause any lessee of the Cars to monitor and record movement of the Cars.

(j) Make all efforts reasonable under the circumstances to maintain and cause any lessee of the Cars to maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives (including Rex) during reasonable business hours.

(k) Paint the Cars such colors and with such designs as Rex may from time to time approve and place reporting marks or such other marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the ICC or the AAR.

(l) Provide Owner with advice and recommendations concerning the sale of the Cars.

(m) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits, payments under manufacturers' warranties covering the Cars or railroad or lessee indemnity payments, in the event of damage to, or loss or total destruction of, a Car which is incurred during the term of this Agreement and to remit all sums due Owner in accordance with Section 7(e).

(n) Furnish factual information reasonably requested by Owner in connection with Federal, State, Canadian Provincial and Mexican tax returns.

(o) If Owner has elected to borrow to finance a portion of the purchase price for the Cars and, prior to the expiration of the term of this Agreement, Owner shall have requested that Rex assist in arranging refinancing of all or part of the amount borrowed, to the extent permitted by applicable laws, rules and regulations (including without limitation any regulation issued by the Board of Governors of the Federal Reserve System), use its best efforts to arrange such refinancing. Neither Rex nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to such refinancing. If Owner is contemplating financing, or has financed, a portion of the purchase price for the Cars, Rex will consult with Owner's lender concerning how to file documents giving rise to a security interest in the Cars with the ICC, will provide information concerning the Cars as may be reasonably requested by the lender and will use its best efforts, if requested by Owner, to make such lender an additional loss payee under any casualty and liability insurance policies covering the Cars.

(p) Pay all Operating Expenses (as defined in Section 5(b)), including management fees payable to Rex.

(q) Pay to the party to whom it is owed the amount of any additional payment in respect of the Actual Purchase Price (as defined in Section 5(c)) of any Car pursuant to Paragraph 1.06 of the Purchase Contract, and any amounts in respect of costs of storage, transit or switching of any Car owed by Owner to Rex pursuant to Paragraph 1.07 of the Purchase Contract.

(r) Pursue any claim arising with respect to Cars under manufacturers' warranties covering the Cars, including any claims pursued pursuant to Section 16, which Rex, based on its good faith judgment, deems desirable, prudent and in the best interests of Owner to pursue.

(s) Provide such advice and perform such services incidental to the foregoing for Owner in connection with the provisions hereof and of the Purchase Contract as may from time to time be reasonably necessary in respect of the purchase, importation, leasing and operation of the Cars.

#### **4. Authority, and Limitations on Authority, of Rex.**

(a) It is recognized that Rex will manage under the Management Program all the covered hopper railcars, including the Cars, purchased by investors thereunder pursuant to management agreements substantially identical to this Agreement. It is recognized that Rex will receive from owners of other cars managed under the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that Rex's services for and obligations to and rights with respect to Owner and the owners of other cars managed under the Management Program are several. Except as expressly provided in Section 4(b), Rex will not act or purport to act for or in the name of the Management Program or the owners of cars managed under the Management Program collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars managed under the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming Rex as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement and the Management Program are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars managed under the Management Program and/or Rex. Rex shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars managed under the Management Program or that such owners are acting collectively or as an entity and Rex shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) Notwithstanding the provisions of Section 4(a), Owner recognizes that the IRS might assert that there exists among Owner and the other owners of cars managed under the Management Program and/or Rex a partnership for Federal income tax purposes and that, pursuant to Section 6698 of the Internal Revenue Code of 1954, as amended (the "Code"), Owner and the other owners of cars managed under the Management Program might be liable for a penalty for failure to file a Federal information return with respect to the Management Program. Rex is authorized to seek, at its discretion, a determination by the IRS whether pooling arrangements such as those embodied in the Management Program constitute partnerships for Federal income tax purposes and whether the election referred to in clause (i) below would be available if such pooling arrangements were determined to be such partnerships. Solely in order to avoid any

such liability, until there shall have been an IRS or judicial determination that pooling arrangements such as those embodied in the Management Program do not constitute partnerships for Federal income tax purposes, Rex is authorized and directed either (i) in the event Rex determines, either by an IRS ruling or an opinion of counsel, that the owners (including Owner) of cars managed under the Management Program are eligible to elect to be excluded from the application of subchapter K of the Code, to make such election or (ii) in the event that Rex so determines that such election may not be made, to file a Federal information return on Form 1065 with respect to the operations of the Management Program and, solely for such purpose, Owner consents to being identified in such election or return as a "partner". For the purpose of making such election or preparing and filing such information return, Owner hereby constitutes and appoints Rex as the agent and attorney-in-fact of Owner and, with the consent of the other owners of cars managed under the Management Program, of the Management Program for and on behalf of, and in the name, place and stead of, the Management Program to prepare and sign as agent and attorney-in-fact and file such election or such Federal information returns for the Management Program, as the case may be. In furtherance of such designation of Rex as agent and attorney-in-fact, Owner will, if Rex shall so request, execute and deliver a Power of Attorney on Form 2848 and/or an Authorization and Declaration on Form 2848-D.

(c) Rex shall not have any authority to:

(i) offer for sale, contract or agree to sell or sell any Cars, except as Owner may from time to time hereafter expressly request or direct; or

(ii) make any alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(c) without the consent of Owner, which consent shall be deemed to have been granted if, within thirty days of Rex giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given Rex notice that Owner objects to the making of such alteration, modification, improvement or addition; or

(iii) permit any loan to it or any of its affiliates of Owner's funds or funds of any other owner of a car managed under the Management Program.

#### **5. Owner's Revenues, Expenses and Net Earnings.**

(a) The actual Gross Revenues (as hereinafter defined) and the actual Operating Expenses (as hereinafter defined) derived from and incurred by the Cars shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b)(i) As used in this Agreement, and except as provided in Section 7(e) the term "Gross Revenues" for any fiscal period shall mean all revenues for such fiscal period (unreduced by any expenses or costs) derived from the ownership, use and/or operation of cars managed under the Management Program, including, but not limited to, rentals under leases and time and mileage charges payable or creditable to a person which is not a railroad, and all income for such period from interim investment of funds held for the account of owners of cars managed under the Management Program.

(ii) As used in this Agreement, the term "Operating Expenses" for any fiscal period shall mean all expenses and costs for such fiscal period incurred in connection with the ownership, management, use and/or operation of cars managed under the Management Program including, but not limited to:

(A) the aggregate monthly management fee provided for in Section 6(a)(i) of this Agreement;

(B) maintenance;

(C) repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(e) of this Agreement or the agreements with other owners of cars managed under the Management Program;

(D) legal fees and expenses incurred in connection with pursuing, enforcing or realizing on claims under manufacturers' warranties covering, or insurance or lessee or railroad payment or indemnity obligations in respect of, the Cars or other cars managed under the Management Program;

(E) mileage credits or payments under the rules of the AAR creditable or payable to a lessee of the Cars or of other cars managed under the Management Program;

(F) painting;

- (G) costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(c) of this Agreement or the agreements with other owners of cars managed under the Management Program;
- (H) accounting fees incurred pursuant to Section 13(d);
- (I) legal fees incurred in connection with enforcing lease rights or repossessing the Cars or other cars managed under the Management Program;
- (J) accounting, legal and other fees and expenses incurred in connection with complying with, including the preparation and filing of reports and other information relating to the Management Program under, the Securities Exchange Act of 1934, as amended and state securities laws;
- (K) accounting, legal and other fees and expenses incurred in connection with registering (or updating such registration) under the Securities Act of 1933, as amended, any offer or sale of the Cars by or on behalf of Owner or any offer of other cars managed under the Management Program by or on behalf of the owners thereof or of complying with state securities and other applicable laws in connection therewith;
- (L) legal fees and expenses incurred in connection with seeking determinations by the IRS with respect to tax issues affecting the ownership, use and/or operation of cars managed under the Management Program;
- (M) insurance premiums (or, if such insurance has been effected under a blanket insurance policy, or insurance policy covering cars in the Management Program and other cars of other owners, the portion of such insurance cost allocable to the cars managed under the Management Program, it being understood that Rex will use its best efforts to allocate to cars managed under the Management Program only such portion of such insurance cost as is attributable to such cars);
- (N) charges, assessments or levies imposed upon or against cars managed under the Management Program of whatever kind or nature;
- (O) losses from liabilities which are not the responsibility of Owner under Section 7(f) or of owners of other cars managed under the Management Program under Section 7(f) of management agreements with such owners;
- (P) fees payable for the recording under the Interstate Commerce Act and under the Uniform Commercial Code of any state of any lease to which the Cars are subject; and
- (Q) that portion of ad valorem, gross receipts and other property taxes which are determined by Rex, or, in the event that cars managed under the Management Program are subject to a lease or leases and bear the reporting marks of the lessee or lessees thereunder, such lessee or lessees to be attributable to the cars managed under the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that Rex will use its best efforts, and will cause such lessee or lessees to use its or their best efforts, to allocate to the cars managed under the Management Program only such taxes as are attributable to such cars).

(iii) Gross Revenues and Operating Expenses shall be accounted for hereunder on a monthly basis on the cash receipts and disbursements method, rather than on the accrual method, of accounting, except as otherwise expressly provided in this Agreement.

(c) Owner's Gross Revenues and Owner's Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues or Operating Expenses, as the case may be, for such fiscal period multiplied by (ii) a fraction the numerator of which is the sum of the products for each Car of the Actual Purchase Price of such Car (as defined below) and the number of days in such fiscal period that such Car is managed under the Management Program and the denominator of which is the sum of the products for each car (including the Cars) managed under the Management Program of the Actual Purchase Price of such car and the number of days in such fiscal period that such car is managed under the Management Program; except that, with respect to that portion, if any, of Gross Revenues that consists of rental income in respect of any car managed under the Management Program payable under the applicable lease for any month commencing prior to the first day of the second month succeeding that in which the last car managed under the Management Program is delivered under lease, for purposes of calculating Owner's Gross Revenues the fiscal period referred to in clause (ii) above shall be the month or months for which such rentals were payable under applicable leases rather than the month or months during which such rentals were received by Rex. The number of cars (or Cars, as the case may be) managed under the Management Program shall be the number of cars actually managed under the Management Program from time to time during such fiscal period and, if any cars are destroyed, lost, foreclosed upon,



sold, disposed of or withdrawn from the Management Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, foreclosure, sale, disposition or withdrawal; provided, however, that (x) notwithstanding that the owner of any cars managed under the Management Program shall have entered into a management agreement with Rex, the cars owned by such owner (who may be Owner) shall not be considered to be managed under the Management Program until such cars shall first have been delivered to the Lessee under the Lease and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction. For the purposes of this Agreement, the Actual Purchase Price of any car (including a Car) not manufactured by Marine Industrie Limitee ("MIL") shall be the Actual Purchase Price thereof calculated in accordance with Paragraph 1.06 of the Purchase Contract. For the purposes of this Agreement, the Actual Purchase Price as of any date of any car (including a Car) manufactured by MIL shall be the Actual Purchase Price thereof calculated in accordance with Paragraph 1.06 of the Purchase Contract based on amounts actually paid as of that date, except that any change in the Actual Purchase Price of such car resulting from any redetermination of, the Actual Purchase Price, including any such change in (1) the actual and final manufacturer's invoice price of such car, (2) the commencement fee based thereon, (3) the cost of transporting such car from MIL's manufacturing plant to the F.O.T. delivery point specified in the initial lease to which the car is subject, (4) the United States import duties on such car, (5) fees payable to customs brokers retained in connection with the importation of such car, (6) the portion of the cost of obtaining the letter of credit required under the terms of the purchase agreement between Rex and MIL allocated to such car and (7) foreign exchange costs, shall be effective for purposes of this Agreement from and after the day (if it is the first day of the month) on which, or from and after the first day of the month succeeding the month in which, the cost or benefit of such redetermination of the portion of the Actual Purchase Price is borne or realized by the owner of such car.

(d) As used in this Agreement, the term "Net Earnings" for any fiscal period shall mean Owner's Gross Revenues for that fiscal period less the sum of (i) Owner's Operating Expenses for that fiscal period; (ii) all compensation due and payable to Rex hereunder pursuant to Sections 6(b) or 9 not theretofore paid; (iii) such reserves (allocated among owners in the same proportion as Operating Expenses are allocated under Section 5(c)) as Rex shall, in its sole discretion, have reasonably created during that fiscal period to provide for the efficient administration of this Agreement and for payment of Operating Expenses; (iv) any amount due and payable from Owner pursuant to Section 7(b) and not theretofore paid; (v) the amount of any additional payment in respect of the Actual Purchase Price (as defined in Section 5(c)) of any Car pursuant to Paragraph 1.06 of the Purchase Contract and not theretofore reimbursed to Rex; and (vi) any storage and transit costs (including the cost of switching the Cars into and out of storage) owed to Rex by Owner under Paragraph 1.07 of the Purchase Contract and not theretofore reimbursed to Rex; provided, however, that Net Earnings distributed to Owner upon the expiration or termination of this Agreement shall include any reserves previously excluded from Net Earnings pursuant to clause (iii) of this Section 5(d), to the extent such reserves are not applicable to expenses arising or payable after the termination or expiration of this Agreement.

## 6. Compensation.

### (a) Management Fee to Rex.

(i) (A) The aggregate monthly management fee payable to Rex, for each full month to and including December 1986, shall be \$70 for each car managed under the Management Program in such month.

(B) The aggregate monthly management fee payable to Rex, for each full month commencing with January 1987 to and including December 1991, shall be the greater of \$70 for each car managed under the Management Program in such month and the product of:

(1) \$70 for each car managed under the Management Program in such month and

(2) a fraction (x) the numerator of which is the aggregate stated rental plus other amounts generated during the period from September 1, 1986, through December 31, 1986, for all cars managed under the Management Program on January 1, 1987, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the stated monthly rental for all cars managed under the Management Program for the month following the month in which the last car to be managed under the Management Program is delivered under the lease initially covering such car, divided by the number of cars managed under the Management Program on the date of such delivery.

(C) The aggregate monthly management fee payable to Rex, for each full month commencing with January 1992 to and including the date of termination of this Agreement, shall be the greater of \$70 for each car managed under the Management Program in such month and the product of:

- (1) \$70 for each car managed under the Management Program in such month and
- (2) a fraction (x) the numerator of which is the aggregate stated rental plus other amounts generated during the period from September 1, 1991, through December 31, 1991, for all cars managed under the Management Program on January 1, 1992, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the stated monthly rental for all cars managed under the Management Program for the month following the month in which the last car to be managed under the Management Program is delivered under the lease initially covering such car, divided by the number of cars managed under the Management Program on the date of such delivery.

(D) The amount of stated rental plus other amounts generated during any period by a car managed under the Management Program for the purposes of this Section 6(a) (i) shall mean the stated rental as set forth in the applicable lease, if any, for the period in question and all other amounts payable for the use of the car and properly allocable to such period, including but not limited to rentals and fees for any arrangement for the use of the car. In computing such amount, no effect shall be given to the fact that rental may have abated with respect to any car pursuant to the terms of the lease covering such car if on that day such lease is in full force and effect.

(ii) The monthly management fee payable to Rex for any Car for any partial month during which such Car is managed under this Agreement shall be the monthly management fee then payable to Rex for a car for a full month reduced proportionately to reflect the portion of such month for which such Car was so managed under this Agreement.

(iii) The inclusion of the aggregate monthly management fee as an Operating Expense has the effect of obligating Owner to pay a fraction of the aggregate monthly management fee specified in Sections 6(a) (i) and 6(a) (ii) the numerator of which is the sum of the product for each Car managed under the Management Program in that month of the Actual Purchase Price of such Car (as defined in Section 5(c)) and the number of days in such month that such Car is managed under the Management Program and the denominator of which is the sum of the product for each car (including the Cars) managed under the Management Program in that month of the Actual Purchase Price of such car and the number of days in such month that such car is managed under the Management Program. It is acknowledged that, in paying Operating Expenses on behalf of Owner and the owners of other cars managed under the Management Program in accordance with Section 3(p), Rex will be paying itself the aggregate monthly management fee.

(iv) The aggregate monthly management fee shall be payable monthly.

(v) The monthly management fee payable to Rex for any car managed under the Management Program shall accrue only so long as such car is managed under the Management Program. For the purposes of this Section 6, management of a car (including any Car) under the Management Program shall be deemed to begin on the day on which such car is delivered under lease and shall be deemed to continue until the termination or expiration of the management agreement (including this Agreement) with respect to such car.

(b) *Refinancing Fee to Rex.* If, as provided in Section 3(o), Rex shall have arranged refinancing of all or part of the purchase price for the Cars and Owner shall have elected to accept such refinancing, Owner shall pay to Rex a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable 30 days after the closing of such refinancing, one-quarter on the same day of the third month following the date of the first payment, one-quarter on the same day of the sixth month following the date of the first payment and the final quarter on the same day of the ninth month following the date of the first payment.

## **7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.**

(a) *Regular Distributions of Net Earnings.* As soon as practicable but in any event within 45 days after the end of each calendar quarter, Rex shall distribute to Owner Net Earnings for such quarter.

(b) *Payment of Operating Deficits.* Within 10 days of receipt of notice and demand from Rex, Owner shall pay to Rex the amount by which Net Earnings for a calendar quarter shall be less than zero.



(c) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, ICC or DOT or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. Rex shall have the right to require Owner, if Owner consents to such alterations, modifications, improvements or additions as provided in Section 4(c), to pay the approximate cost thereof to Rex upon 10 days prior written notice. Upon completion, Rex shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, Rex shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to Rex the amount of such difference.

(d) *Payment for Additional Insurance.* If Rex determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within 10 days of receipt of notice and demand from Rex, Owner shall pay to Rex the cost of any such insurance placed or purchased by Owner through Rex.

(e) *Payment For Certain Property Damage.* The cost of repair of damage to any Car (other than the costs of repairs which Rex determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). Rex shall have the right to require Owner to pay to Rex, upon 10 days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at Rex's election, such portion of such cost as Rex believes will not be covered by any such payments which may be received by Rex (as co-insured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that Rex may apply to such cost of such repair any payments so received by Rex to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by Rex and applied to payment of the cost of such damage, Rex shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by Rex to such repair, Rex shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by Rex to such repairs, Owner shall promptly pay to Rex the amount of such difference. Rex shall promptly remit to Owner any payments to cover such damage to such Car which are received by Rex and not applied to payment of the cost of repair of such damage.

(f) *Payment of Uninsured Losses.* Losses from liability to a third party or parties for bodily injury or property damage caused by any Car, to the extent not covered by insurance, are the sole responsibility of Owner. Within 10 days of receipt of notice and demand from Rex, Owner shall pay to Rex the amount of such liability.

(g) *Receipts and Payments as Acts of Owner; Obligations of Owner.* In collecting or receiving any Gross Revenues and in paying or disbursing any Operating Expenses Rex is acting solely as agent for Owner. The provisions of Sections 3, 5 and 7 of this Agreement shall not be understood to diminish or modify the rights of Owner to receive Gross Revenues or the obligation of Owner to pay Operating Expenses.

## **8. Indemnification and Subrogation**

(a) In addition to any other obligations of Owner hereunder (including Section 7(b)) or otherwise, Owner shall defend (if such defense is tendered to Owner), indemnify and hold Rex harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses, settlements or liabilities incurred or asserted against Rex (i) as a result of any failure (unless caused by the negligence, bad faith or misconduct of Rex) on the part of Owner to perform Owner's obligations under this Agreement, the Purchase Contract or the Lease (or any lease entered into subsequent to the Lease to which any one or more of the Cars may be subject); (ii) arising as a result of or in any way connected with the negligence, bad faith or willful misconduct of Owner; or (iii) arising as a result of or in any way connected with the use, operation, possession, control, maintenance, repair or storage of any Car if it shall be determined that the claimant against Rex did not have a valid claim or was otherwise not entitled to relief against Rex. **Rex shall be entitled to indemnification under Section 8(a)(ii) or 8(a)(iii) only after a determination to that effect (which determination shall include a finding that the cost, liability or expense in question was not a result of Rex's negligence, bad faith or misconduct) by a sole arbitrator, whose jurisdiction shall be exclusive, under the then-effective rules of the American Arbitration Association (to which arbitration Owner and Rex hereby consent).** For the purpose of Section 8(a)(ii), Owner shall be deemed to have acted negligently if Owner withholds consent under Section 4(c) to any alteration, modification, improvement or addition to the Cars of the type referred to in Section 7(c), or if Owner takes any action, or omits to take any action after due notice of the necessity therefor, preventing Rex from providing for the maintenance or repair of any Car or from pursuing any claim arising with respect to Cars under manufacturers' warranties covering any Car.

(b) If (i) Rex incurs any cost or expense (including reasonable attorneys' fees) in connection with any claim, action, damage, loss or liability as a result of the use, operation, possession, control, maintenance, repair or storage of any Car, (ii) Rex shall not have been found to have been negligent or acting with bad faith or misconduct in connection therewith, and (iii), owner is entitled to insurance or lessee or railroad indemnity payments in respect of such cost or expense, then to the extent of the lesser of Rex's cost or expense or owner's said entitlement, Rex shall be subrogated to Owner's said entitlement.

## 9. Sales Agency

(a) During the terms of this Agreement, upon the request of Owner, Rex shall act as agent in the sale of the Cars.

(b) Except in the case of any sale or other disposition of a Car to Rex or any of its affiliates (that is, any company, person or firm controlling, controlled by or under common control with, Rex) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to Rex a sales commission determined as follows:

(i) Upon the sale of a Car arranged by Rex and consummated within four years from the date on which Owner purchased such Car the sales commission shall be in an amount determined by Rex that shall not exceed the sum of (A) 4% of total sale proceeds of the Car and (B) 25% of any total sale proceeds in excess of 100% of the Actual Purchase Price; or (ii) upon the sale of a Car arranged by Rex and consummated after four years from the date on which Owner purchased such a Car the sales commission shall be equal to the lesser of (A) the sales commission that would be payable if the sale were subject to Section 9(b)(i) or (B) the excess, if any, over the Actual Purchase Price of the sum of (x) the investment tax credit allowable to Owner in respect of the Car in the year the Car was placed into service, (y) the aggregate amount of Net Earnings and amounts held in reserve distributed or to be distributed to Owner during the term of this Agreement and (z) the total sale proceeds from the sale of the Car.

(c) (i) If during the term of this Agreement, Owner has received a bona fide offer to purchase a Car otherwise than through Rex acting pursuant to Section 9(a) on terms acceptable to Owner, then, immediately upon receipt of such offer and prior to consummating such sale, Owner shall promptly give Rex written notice of the terms of such offer, including the amounts of any commissions and the net sale proceeds that would be payable in connection therewith, and the terms, if any, thereof that limit the period during which the offer shall remain open.

(ii) Except where the terms of an offer to purchase a Car referred to in Section 9(c)(i) provide that the offer shall remain open for a period less than 45 days (in which case Section 9(c)(iii) shall govern), then for a period of 45 days after the giving to Rex of the notice provided for in Section 9(c)(i), Owner shall not consummate such sale, and Rex shall have the right to find for Owner, and owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i).

(iii) If the terms of the offer to purchase a Car referred to in Section 9(c)(i) provide that the offer shall remain open for a period less than 45 days, then for the period that such terms provide that the offer shall remain open (or, if such offer would by its terms remain open for five days or fewer after the giving to Rex of the notice provided for in Section 9(c)(i), for five days after the giving to Rex of the notice provided for in Section 9(c)(i)), Owner shall not consummate such sale, and Rex shall have the right in its discretion either (A) to find for Owner, and Owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i), or (B) to purchase the Car at a price that results in Owner receiving the same net sale proceeds that Owner would receive in making the sale referred to in Section 9(c)(i).

(d) For the purposes of this Section 9, "net sale proceeds" shall mean the gross sale proceeds from the sale of the Car less any commissions payable in connection therewith. For the purposes of this Section 9, Rex shall be deemed to have found an offer for the purchase of a Car or to have purchased a Car if there is tendered to Owner on or prior to the second full business day prior to the date on which Owner may consummate the third party sale under Section 9(c)(ii) or 9(c)(iii) an offer for the purchase and sale of the Car signed by the purchaser and subject only to inspection to determine the Car's suitability for interchange according to the rules of the Association of American Railroads, cleaning, repainting, restenciling, the delivery of the Car to a point reasonably designated by the purchaser, and other standard conditions and warranties.

## **10. Subordination.**

This Agreement and Rex's authority and rights hereunder (i) are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any lender to whom Owner has granted a security interest in the Cars and (ii) are subject and subordinate to the terms of any chattel mortgage, security agreement or other financing document given by Owner to such lender providing for the loan or such lien or security interest (any and all such agreements collectively being the "Finance Documents"); provided, however, that all such liens and security interests are subject to any lease (including the Lease) entered into during the term of this Agreement (including any rights of the lessee under any such lease) covering any Car, to Rex's right to collect Gross Revenues derived from the ownership, use and/or operation of the Cars accruing under any lease entered into during the term of this Agreement covering any Car and to Rex's right to apply such Gross Revenues to Owner's Operating Expenses and sums due Rex hereunder to the extent such Operating Expenses and sums due Rex hereunder accrue during the term of this Agreement.

## **11. Dealings With Lessees; Withdrawal of Cars From the Lease; Manager's Remedies Against Defaulting Owner.**

(a) It is intended that leases of cars managed under the Management Program (including the Lease) will cover several or all of the cars so managed under the Management Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Management Program) shall, until the expiration or termination of such lease, acknowledge Rex as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals Rex shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and Rex shall select a person or entity, which may be Rex, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) Rex, on behalf of Owner, shall exercise all rights of the lessor of the Cars under the Lease or any other lease to which the Cars may then be subject without being required to seek or receive the consent of or instructions from Owner.

(c) If Rex determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any Car which is subject to the Lease or any other lease to which the Cars may then be subject and which is not managed under the Management Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then Rex may require the transfer to Rex of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the Cars of such person from such leases and substitute thereunder cars identical to the Cars so withdrawn.

(d) If Rex terminates this Agreement pursuant to Section 2(d), or if Owner terminates this Agreement pursuant to Section 2(c), until such time as Rex requires the transfer to Rex of all of Owner's right, title and interest under the Lease or any other lease to which the Cars may then be subject pursuant to Section 2(c) or Section 2(d), as the case may be, unless the then lessee(s) of the Cars shall be willing to pay rental to Owner, Owner shall, until the expiration of such Lease or lease, acknowledge Rex as Owner's agent for the purpose of receiving rentals under such lease(s), which rentals Rex shall remit, after deducting the amount of any obligations of Owner pursuant to Section 7(b) accruing on or prior to such termination, forthwith upon receipt. In the event of such termination, Rex shall in addition be entitled to pursue any remedy at law or in equity for Owner's failure to fulfill obligations under Section 7(b), including the right to recover money damages.

## **12. Withdrawal in Case of Special Improvements.**

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(c) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation or maintenance of covered hopper railcars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

### 13. Reports.

(a) As soon as practicable but not later than 45 days after the end of each calendar quarter other than the fourth calendar quarter, Rex will distribute to Owner an unaudited report showing, in reasonable detail, the Owner's Gross Revenues, Owner's Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items.

(b) Within 60 days after the close of each calendar year, Rex will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 60 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify Rex in writing) Rex will deliver to Owner a statement setting forth all information (including computation, on the same or similar bases as those set forth in the analytic models contained in the prospectus of Rex Leasing Covered Hopper Railcar Management Program 1980 to which a form of this Agreement is attached as an exhibit, as modified by the elections set forth in Schedule A to this Agreement, of depreciation deductions and amortization of the advisory fee payable to Merrill Lynch Leasing Inc. and the lease negotiation fee payable to Rex as described in such prospectus, but excluding information relating to the financing of the Cars) necessary in connection with the preparation of Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year Rex will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to Rex and its affiliates, as to their review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the Management Program, the mathematical correctness of the computations made by Rex in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by Rex to the obligations and duties of Rex under this Agreement. Such accountants shall also prepare the Federal information return on Form 1065 with respect to the operations of the Management Program if, pursuant to Section 4(b), Rex files such information return.

### 14. Books and Records; Bank Account; Communications with Third Parties.

(a) Rex shall maintain books and records reflecting solely transactions arising from the operations of the cars managed under the Management Program, including, without limitation, the receipt of items constituting Gross Revenues, the incurrence, accrual and payment of items constituting Operating Expenses, the distribution of Net Earnings, receipt of payments for operating deficits from owners of such cars, and the payment of fees to Rex pursuant to Section 6. Such books and records shall (i) reflect only the transactions arising from operations of the cars managed under the Management Program, (ii) be kept physically apart from any other books and records maintained by Rex for whatever purpose, and (iii) be available to Owner upon Owner's request for examination during the normal business hours of Rex. At the termination of the term of this Agreement Rex shall furnish (i) one copy of each annual report previously delivered to Owner pursuant to Section 13(b) and (ii) one copy of such other books and records which (x) relate to the Cars and (y) Rex maintains at the time of such termination in the normal course of its record keeping under this Section 14(a) to Owner within 30 days after Owner gives notice to Rex requesting such materials, which notice shall be given within 30 days after such termination. Upon the written request of Owner and payment by Owner of the reasonable expenses therefor, Rex shall provide Owner with the list of the names and addresses of each other owner of a car managed under the Management Program; provided that such other owner has consented in writing to Rex's providing such owner's name and address to Owner.

(b) Neither the receipt nor the disbursement (other than payments made by or on behalf of Owner or other owners of cars managed under the Management Program to Rex, as compensation or reimbursement of Rex's expenses hereunder, pursuant to the terms of this Agreement or the agreements with such other owners) of any amounts generated by the operation of the Cars and the other cars managed under the Management Program shall appear in the accounting records or financial statements of Rex or any of its affiliates, and any assets of Owner and the other owners of cars in the Management Program shall not be treated by Rex as assets of Rex or any of its affiliates or appear in the accounting records or financial statements of Rex or any of its affiliates. Mileage charges generated by the Cars and other cars managed under the Management Program shall be kept in a bank account which is in the name of, or for the benefit of, Owner and the other owners of cars managed under the Management Program.

(c) Rex shall cause to be maintained in the name of Owner and the owners of the other cars managed under the Management Program a bank and/or investment account (the "Management Program Account") into or through which Rex shall deposit or invest the funds received by it and generated by the operation of the Cars and the other cars

managed under the Management Program (and not any other cars managed by Rex otherwise than under the Management Program) pending disbursement of such funds in accordance with this Agreement and the agreements for the management of the other cars managed under the Management Program. Rex shall maintain the Management Program Account only at a bank and/or other institution(s) which either (i) do not have regular banking or investment relations with Rex or any of its subsidiaries or its parent or (ii) agree in writing that such account is not subject to a right of set-off or any other claim or lien arising from any relationship between such bank and/or other institution(s) and (x) Rex or any of its affiliates or (y) any owners of cars managed by Rex otherwise than under the Management Program. Rex shall have the authority to invest funds in the Management Program Account in direct obligations of the United States or of an instrumentality thereof which are backed by the full faith and credit of the United States; certificates of deposit of United States banks or trust companies with a combined capital and surplus of at least \$400,000,000; and commercial paper rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investors Services, Inc. Pursuant to such authority and so long as Rex may lawfully do so, Rex shall invest funds in the Management Program Account, pending distribution pursuant to Section 7(a) and to the extent that cash is not required in the performance of Rex's duties hereunder and under agreements with owners of cars managed under the Management Program, in a manner that Rex, in its sole discretion judges will maximize the return on such funds.

(d) In dealing with third parties in connection with the Cars and the other cars managed under the Management Program, Rex shall designate itself as agent for Owner or owners of such other cars, as the case may be, in papers directed to such third persons, including, without limitation, letters, invoices and drafts drawn on the Management Program Account.

#### **15. Use of Cars.**

Rex shall use its best efforts to cause any lessee of the Cars under a lease (including the Lease) to prevent the Cars from being used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Code, or any successor provision thereof, and the regulations thereunder. Rex shall cause each lease for the Cars entered into with, or arrangement for the use of the Cars made by, a railroad which expects to use the Cars on its own line or a person which is not a railroad to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

#### **16. Declaration of Trust and Covenant to Pursue Warranty Claims.**

As to each Car, if any, manufactured by MIL:

(a) Rex hereby grants in trust to, and declares that it will hold in trust as trustee for the benefit of, Owner to the fullest extent permitted under applicable law and the purchase agreement referred to below, any and all rights against MIL in respect of the Cars (including the contractual warranties provided in article 9 of such purchase agreement) arising under the Purchase Agreement dated as of November 1, 1979, between Rex and MIL, such trust and the obligations of Rex as trustee to survive the termination of this Agreement and until such rights, if any, shall have expired or are no longer being pursued. The rights of Owner as beneficiary of such trust shall inure to the benefit of Owner's heirs, successors and assigns.

(b) Rex agrees, as trustee under the trust created herein and in its personal capacity as holder of such contractual warranties, to pursue, for the account and at the expense of Owner, any claims arising under such warranties which Rex in its good faith judgment deems it desirable, prudent and in the best interests of Owner to pursue. Rex's covenant under this Section 16(b) will survive the termination of this Agreement and until such rights, if any, shall have expired or are no longer being pursued, and will inure to the benefit of Owner's heirs, successors and assigns.

(c) Rex shall not receive compensation for such services in its personal capacity or as trustee under the trust created herein.

#### **17. Other Covenants of Rex.**

Rex agrees that, during the term of this Agreement, it will (a) use its best efforts to maintain its net worth at an amount at least equal to \$1,000,000, (b) not incur any indebtedness other than accounts payable arising in the ordinary course of its business, obligations owing to Rex-Noreco, Inc. and obligations incurred in connection with the purchase of

the cars offered for management under the Management Program and (c) limit its activities to those necessary or appropriate in connection with the performance by Rex of its obligations under this Agreement and similar agreements with the owners of other cars managed under the Management Program.

#### 18. Notices.

Any notice required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to Rex:	Rex Leasing, Inc. 616 Palisade Avenue Englewood Cliffs, New Jersey 07632 Attn: President
If to Owner:	To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

#### 19. Miscellaneous.

(a) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of New Jersey.

(b) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) *Headings.* Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) *Amendment.* No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) *Successors and Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that, except as provided in Section 16, no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against Rex without the prior written consent of Rex. Rex hereby consents, subject to the provisions of Section 10 of this Agreement, to Owner's assignment to any lender party to Finance Documents referred to in Section 10 of Owner's rights, interests, powers and benefits under this Agreement as collateral security for the loan and the obligations of Owner under such Finance Documents.

(f) *Force Majeure.* Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including, without limitation, acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) *Other Cars Owned or Managed by Affiliates of Rex.* It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit affiliates of Rex from providing the same or similar services to any person or organization not a party to this Agreement. In particular, affiliates of Rex shall be entitled to own and operate for their own accounts identical cars not managed under the Management Program and / or to manage such cars under a similar management agreement with another owner, subject to the following conditions:

(i) in the event that railroad cars similar to or competitive with the Cars, but (x) owned by any of Rex's affiliates or any officers or directors of Rex or any of its affiliates, and (y) not managed under the Management Program, are available for leasing at the same time the Cars are so available, subject to the business needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, Rex shall, and Rex-Noreco shall and shall cause Rex's affiliates to, re-market the Cars before any of Rex's affiliates re-markets any such similar or competitive railroad cars; and

(ii) in the event that any affiliate of Rex manages for persons who are not participating in the Management Program railroad cars similar to or competitive with the Cars and not owned by any of Rex's affiliates or any officers or directors of Rex or any of its affiliates and the number of such railroad cars exceeds the demand therefor, subject



to the business needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, Rex shall, and Rex-Noreco shall and shall cause Rex's affiliates to, generally, re-market first those railroad cars (including the Cars) which have been off lease and available for the longest period of time.

(h) *Waiver.* The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) *Severability.* If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

REX LEASING, INC.

By [Signature] 8/1/80  
(Authorized Signature)

177-26-4729 8714 882-17621

MR M RUTLEDGE FLYNN  
670 N RIVER ST  
WILKES BARRE PA 18705

OWNER:

Name M. RUTLEDGE FLYNN  
(Please Print)

By [Signature]  
(Signature)

This Agreement must be signed  
before a notary public by  
all parties hereto.

Owner must complete Schedule  
A hereto.

Title of signer if Owner is other than a natural person:

Signature of  
Joint Owner: \_\_\_\_\_

Address 670 N. RIVER ST.  
WILKES-BARRE PA 18705

Dated: 6-27-80 1980

Undertaking by Rex-Noreco, Inc.

In consideration of the execution and delivery by Owner of this Agreement, Rex-Noreco, Inc., a New Jersey corporation and owner of all the outstanding capital stock of Rex, hereby agrees (i) not to permit Rex to declare any dividend or lend any money to Rex-Noreco, Inc., if the effect of such dividend or loan would be to reduce the net worth of Rex to an amount less than \$1,000,000; (ii) not to permit Rex to engage in any activity other than (a) participating in the offering made by the prospectus of Rex Leasing Covered Hopper Railcar Management Program 1980 to which a form of this Agreement is attached as an exhibit and (b) serving as manager under the Management Program; and (iii) to observe, and to cause Rex and affiliates of Rex to observe, the provisions of Section 19(g) of this Agreement.

REX-NORECO, INC.

By [Signature] 8/1/80  
(Authorized Signature)

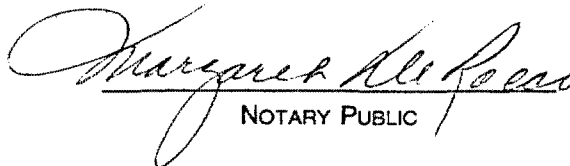


**For Owner who is an individual:**

STATE OF Pennsylvania ss:  
COUNTY OF Luzerne

ON THIS 27th DAY OF June, 1980, BEFORE ME PERSONALLY APPEARED  
M. Rutledge Flynn (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME KNOWN TO BE THE PERSON  
DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND HE OR SHE ACKNOWLEDGED THAT HE OR SHE EXECUTED  
THE SAME AS HIS OR HER FREE ACT AND DEED.

[SEAL]

  
NOTARY PUBLIC

MY COMMISSION EXPIRES

MARGARET DeROCCO, NOTARY PUBLIC  
WILKES-BARRE, LUZERNE COUNTY  
MY COMMISSION EXPIRES SEPT. 15, 1983  
Member, Pennsylvania Association of Notaries

**For Owner that is an entity:**

STATE OF \_\_\_\_\_ ss:  
COUNTY OF \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1980, BEFORE ME PERSONALLY APPEARED  
\_\_\_\_\_ (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME PERSONALLY KNOWN, WHO  
BEING BY ME DULY SWORN, SAYS THAT HE OR SHE IS THE \_\_\_\_\_ (TITLE OF OFFICE) OF  
\_\_\_\_\_ (NAME OF ENTITY), A \_\_\_\_\_ (TYPE OF ENTITY); THAT  
THE SEAL, IF ANY, AFFIXED TO THE FOREGOING INSTRUMENT IS THE SEAL OF SAID ENTITY, THAT SAID INSTRUMENT WAS SIGNED,  
SEALED (IF APPLICABLE) AND DULY AUTHORIZED ON BEHALF OF SAID ENTITY, AND HE OR SHE ACKNOWLEDGED THAT THE  
EXECUTION OF THE FOREGOING INSTRUMENT WAS THE FREE ACT AND DEED OF SAID ENTITY.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES

STATE OF New Jersey  
COUNTY OF Bergen SS:

ON THIS Aug DAY OF Aug, 1980, BEFORE ME PERSONALLY APPEARED Mark A. Salitan (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME PERSONALLY KNOWN, WHO BEING BY ME DULY SWORN, SAYS THAT HE IS THE Pres (TITLE OF OFFICE) OF REX LEASING, INC., THAT THE SEAL AFFIXED TO THE FOREGOING INSTRUMENT IS THE CORPORATE SEAL OF SAID CORPORATION, THAT SAID INSTRUMENT WAS SIGNED AND SEALED ON BEHALF OF SAID CORPORATION BY AUTHORITY OF ITS BOARD OF DIRECTORS, AND HE ACKNOWLEDGED THAT THE EXECUTION OF THE FOREGOING INSTRUMENT WAS THE FREE ACT AND DEED OF SAID CORPORATION.

[SEAL]

Rubin Schertz  
NOTARY PUBLIC

MY COMMISSION EXPIRES

RUBIN SCHERTZ  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 4, 1982

STATE OF New Jersey  
COUNTY OF Bergen SS:

ON THIS Aug DAY OF Aug, 1980, BEFORE ME PERSONALLY APPEARED Mark A. Salitan (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME PERSONALLY KNOWN, WHO BEING BY ME DULY SWORN, SAYS THAT HE IS THE Pres (TITLE OF OFFICE) OF REX-NORECO, INC., THAT THE SEAL AFFIXED TO THE FOREGOING INSTRUMENT IS THE CORPORATE SEAL OF SAID CORPORATION, THAT SAID INSTRUMENT WAS SIGNED AND SEALED ON BEHALF OF SAID CORPORATION BY AUTHORITY OF ITS BOARD OF DIRECTORS, AND HE ACKNOWLEDGED THAT THE EXECUTION OF THE FOREGOING INSTRUMENT WAS THE FREE ACT AND DEED OF SAID CORPORATION.

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## SCHEDULE A TO THE MANAGEMENT AGREEMENT

Set forth below are the assumptions relating to tax issues that Rex intends to use in preparing reports to Owner under Section 13(c) of the Management Agreement. Unless Owner instructs Rex otherwise by indicating an exception to an assumption and recording an alternative assumption, Rex will prepare such reports based on the assumptions set forth below. These assumptions are based on the assumptions used in preparing the Analytic Model of Covered Hopper Railcar Ownership and Operations attached to the prospectus as Exhibit A. They are not intended to be and should not be regarded in any way as a recommendation as to which of many possible alternative choices is most suitable for any particular Owner, and no assurance can be given that the assumptions will not be challenged by the IRS upon examination.

*Each Owner is urged to consult with his, her or its own tax advisors with respect to the tax consequences of Car ownership and participation in the Management Program.*

### Exception to Assumption

#### ASSUMPTIONS:

1. Owner is married.
  2. Owner will file a joint income tax return.
  3. The cost of each Car for Federal income tax purposes will be the sum of
    - (a) The Actual Purchase Price of such Car calculated in accordance with Paragraph 1.06 of the Purchase Contract less commencement fee referred to in Paragraph 1.06(a)(ii) thereof;
    - (b) Portion of commencement fee referred to in Paragraph 1.06(a)(ii) of the Purchase Contract paid to Rex that is attributed to the acquisition of cars (2.5% of the amount of item 3(a) above); and
    - (c) Portion of commencement fee referred to in Paragraph 1.06(a)(ii) of the Purchase Contract paid to Rex that is paid to Merrill Lynch as a selling agent's fee (2.375% of the amount of item 3(a) above).
  4. Owner (if a married individual) will claim first-year "bonus depreciation" with respect to the cars in the amount of \$4,000.00. Other Owners will claim no "bonus depreciation".
  5. Owner will initially utilize the 200% declining balance method in determining the depreciation allowance for each Car and will change to the sum-of-the-years' digits method when the latter method results in greater depreciation deduction than the former.
  6. The salvage value of each Car is 10% of cost which is reduced by 10% of cost pursuant to Section 167 (f) of the Code.
  7. The portion of the commencement fee paid to Rex which is paid to Merrill Lynch Leasing Inc. as a fee for its advisory services in structuring the Management Program (2.375% of the amount of item 3(a) above) is amortized over 15 years.
  8. Car owner will elect to use the Asset Depreciation Range "Class Life" (ADR) System for the determination of the depreciation allowance for the Cars and will elect to use the half-year convention, pursuant to which the depreciation allowance for the Cars for 1980 will be determined by treating the Cars as placed in service on July 1, 1980, the first day of the second half of the owner's taxable year.\*
  9. Each Car has a depreciable life of twelve years.
  10. The portion of the commencement fee paid to Rex which is attributed to its lease negotiation services (1.25% of the amount of item 3(a) above) is amortized over the weighted average term of the Initial Leases.
- \* Rex will advise Owner if the proposed amendment to the Treasury Regulations is adopted, which proposed amendment is discussed under "Depreciation and Other Deductions—Methods of Computing Depreciation" under "Tax Aspects of Car Ownership" in the prospectus and may affect Owner's decision as to assumption 8.

SINGLE

# EXHIBIT A TO THE MANAGEMENT AGREEMENT

Cars subject to the Management Agreement:

<u>Manufacturer</u>	<u>Number of Cars</u>	<u>Description of Cars</u>	<u>Reporting Marks and Serial Numbers</u>
GM	07E	4700 cubic foot capacity, 100-ton truck, steel covered hopper cars	RRRX 2117
TRIL	07E	4650	RRRX 1082

MAR 12 1980 - 9 20 AM

## LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 20<sup>th</sup> day of Dec. , 1979, between Rex Leasing, Inc., a New Jersey corporation, 616 Palisade Ave., Englewood Cliffs, New Jersey 07632, as principal and/or agent for the parties to be named by amendment to the schedule attached hereto in accordance with the procedure referred to in paragraph 1(b) hereof (Rex Leasing, Inc. and such parties are herein collectively referred to as "Rex," except that, as to any particular Car referred to in any such amendment, only Rex Leasing, Inc. and the party identified in such amendment as the owner/lessor of such Car are referred to as "Rex"), as lessor, and Farmland Industries, Inc. ("Lessee"), as lessee.

## RECITALS

Lessee desires to lease from Rex as lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this lease.

## AGREEMENT

It is agreed:

1. *Lease of Cars.* (a) Rex hereby leases to Lessee and Lessee hereby leases from Rex railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") set forth in the schedule (the "Schedule") attached hereto and by this reference made a part hereof.

Any party named in an amendment to the Schedule as a principal for whom Rex Leasing, Inc. is acting as agent, and only such party, shall have the rights of lessor hereunder and be obligated hereunder for obligations and liabilities of lessor hereunder arising, from and after the effective date of the amendment to the Schedule so identifying such party, in respect of the particular Car(s) identified in such amendment as being owned by such party, and no party named on an amendment to the Schedule shall be obligated hereunder to lease to Lessee any Cars other than the particular Cars identified in such amendment as being owned by such party. The word "Schedule" as used herein includes the Schedule, as executed concurrently herewith, and all amendments thereto, each of which, when signed by Rex Leasing, Inc. and Lessee, shall be a part of this lease.

(b) Rex Leasing, Inc. may, from time to time and without notice to or consent of Lessee, assign all rights and privileges, subject to all duties appurtenant thereto, in and to any one, some or all of the Cars to any party or parties for whom Rex Leasing, Inc. is acting as agent. Notwithstanding the above, the Schedule may be amended by Rex Leasing, Inc. alone from time to time, upon which such amendment shall be a part of this lease, in order to identify or, as and when appropriate, reidentify (i) a principal for whom Rex Leasing, Inc. is so acting as agent and who owns any Cars and (ii) the particular Cars owned by such principal. Any amendment to the Schedule that may so be made by Rex Leasing, Inc. alone shall be deemed to have been so made and to have become effective when a copy of such amendment shall have been attached to an original counterpart of this lease in the possession of Rex Leasing, Inc. Rex Leasing, Inc. shall deliver a copy of each such amendment to Lessee, but such delivery shall not be a condition precedent to the effectiveness of such amendment. If Rex Leasing, Inc. determines in its sole discretion that any purchaser, foreclosing mortgagee, donee or other transferee of any Car owned by an owner/lessor hereunder is not capable of performing the duties and obligations of a lessor hereunder in accordance with the terms hereof, then Rex Leasing, Inc. may require the transfer to it of all right, title and interest under this lease of such purchaser, foreclosing mortgagee, donee or transferee; without recourse, withdraw the Cars of such person from this lease; and substitute hereunder Replacement Cars.

(c) It is the intent of the parties hereto that Rex Leasing, Inc., or its principal or principals or their assignees, shall at all times be and remain the lessor of their respective Cars. Lessee shall not take any action or file any document which is inconsistent with this intent, and Lessee will take such action and execute such documents as may be necessary to accomplish this intent.

2. *Delivery of Cars.* Rex shall deliver the Cars as promptly as is reasonably possible. Rex's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and Rex shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays, defaults and/or other failure to perform, whether or not legally excused, by carriers, material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond Rex's control. Initial delivery shall be at the point specified in the Schedule. From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse Rex for the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from repair shops, storage or terminal facilities.

3. *Condition of Cars — Approval.* All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in the Schedule; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Prior to the time of delivery to Rex by the manufacturer thereof (of which event Rex will give Lessee at least five days' notice) of any new Car not previously leased to a lessee and not thereafter, Lessee may have its authorized representative inspect such Cars at the manufacturing plant and approve or reject them as to condition. Prior to the time of delivery to Lessee of any other Car (of which event Rex will give Lessee at least five days' notice), Lessee may have its authorized representative inspect such Cars at the point specified in the notice and approve or reject them as to condition. From and after the date of such inspection and approval, Cars so inspected and approved, and, from and after the time of delivery to Rex by the manufacturer in the case of new cars and from and after the time of delivery to Lessee in the case of an other car, any Cars which Lessee does not inspect by the applicable time specified above, shall be conclusively deemed to be approved for all purposes and to meet all requirements of this lease. At Rex's request, Lessee shall, to evidence such approval, deliver to Rex an executed Certificate of Approval in the form of exhibit A with respect to all approved Cars.

4. *Use and Possession.* Throughout the continuance of this lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that each Car shall at all times be used (a) in conformity with Interchange Rules; (b) in compliance with the terms and provisions of this lease; (c) in a careful and prudent manner, solely in the use, service and manner for which it was designed; and (d) only within the continental limits of the United States of America or in temporary or incidental use in Canada and, in any event, only in a manner which will not cause the owner/lessor of such Car to lose the Federal investment tax credit to be claimed by such owner/lessor in respect of such Car. Lessee shall not alter the physical structure of any Car.

5. *Term.* This lease shall be effective as to any Car accepted by Lessee on the date of delivery to Lessee of such Car pursuant to Paragraph 2 hereof and the lease term for all Cars leased hereunder shall end a number of years after the Last Date of Delivery equal to the lease term specified in the Schedule, unless sooner terminated in accordance with the provisions of this lease or unless extended pursuant to the terms of Paragraph 11; provided, however, that in no event shall the period during which any Car is subject to this lease equal or exceed six years. A Car shall be conclusively deemed to have been delivered, upon tender of delivery of such car, at the initial F.O.T. delivery point specified in the schedule; to Lessee or the freight agent at such delivery point.

6. *Rental.* (a) *Per Car.* During the term of this lease, Lessee shall pay to Rex for each Car, commencing on the date of delivery and acceptance thereof, the monthly rental specified in the Schedule.

(b) *Adjustment.* Within a reasonable period of time after the end of each calendar year during the term hereof, and upon termination of the lease, Rex shall, to the extent such information is available to it, determine the total number of miles that each Car traveled during such calendar year or portion thereof,

40,000

whether loaded or empty. If it is determined that any Car traveled over ~~90,000~~ miles during such calendar year or pro rata portion thereof for a period of less than 12 full calendar months, Lessee, upon written notice by Rex, shall pay to Rex within fifteen (15) days of such notice as additional rental for such Car for such calendar year or portion thereof an amount equal to \$0.02 per mile multiplied by the number of miles, whether loaded or empty, in excess of ~~90,000~~ or a pro rata portion thereof for a period of less than 12 full calendar months.

(c) Mileage Credits. If the Cars bear Rex's reporting marks and numbers, any time and mileage payments paid or allowed by railroads on the Cars shall be the property of Rex but, insofar as applicable laws and regulations permit, Rex shall credit time and mileage payments actually received by it during an Accounting Period (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this lease during such Accounting Period; provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total rental payable by Lessee during such Accounting Period, any such excess to be the sole property of Rex. Lessee agrees to monitor and record and to maintain complete and accurate records with respect to and to report to Rex all transactions relating to the Cars and all movements of the Cars, giving the date, destination, routing of and, to the extent such information is available to it, mileage traveled by the Cars together with all information relating thereto which Lessee may receive from railroads or from other sources; to deliver to Rex not later than the tenth day of each month copies of all bills of lading, covering shipment in the Cars, for the preceding month; and to allow Rex to inspect Lessee's records (including copies of relevant bills of lading) in respect thereto. Upon notice from any railroad, whether received prior to or after termination of this lease, Lessee agrees to pay Rex all sums due on account of all excess empty mileage incurred on Cars during the term of this lease at the rate established by the applicable railroad tariff.

7. **Payment.** Lessee shall make payment of all sums due hereunder to Rex in immediately available funds at the address provided in Paragraph 21 hereof, or such other place as Rex may direct. Rental payments shall be made monthly in advance on or before the 1st day of each calendar month for which such rental is due, except that the first full calendar month's payment shall, in addition, include rental in arrears on a prorated basis covering any prior period of less than one calendar month.

8. **Title.** Lessee shall not by reason of this lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. **Repairs.** (a) Rex. Except as may otherwise be provided in this Paragraph 9(a) and (b), Rex shall be responsible for all Repair Work. Lessee shall promptly notify Rex of the need for any Repair Work of which it has knowledge. Rex shall have no responsibility hereunder until and unless informed of the need for Repair Work. Rex may require Lessee to deliver Cars to such place or places as Rex designates for all Repair Work, and Rex may terminate this lease with respect to any Car as to which it deems Repair Work to be unsuitable or uneconomical.

(b) Lessee. Except where a railroad or railroads have timely discharged full responsibility therefor, Lessee shall be responsible for and shall pay all costs and expenses of all Repair Work or other work or materials (i) required by reason of damage or other condition caused by Lessee or anyone other than Rex, whether by negligence or otherwise; (ii) required by reason of damage or other condition caused by loading, unloading or use other than as permitted herein; (iii) necessary in order to repair, replace or maintain interior lading equipment, special interiors and linings and removable parts in good, safe operating condition; (iv) required by reason of loss or damage resulting from any commodity or other material loaded in or on any Car; or (v) required by Interchange Rules adopted or promulgated after the date hereof. Equipment installed on any Car by Lessee shall be the property of the owner/lessor of such Car and any such equipment shall not constitute the payment of rental by the Lessee to the owner/lessor of such Car and shall not reduce the obligations of Lessee to pay rentals required hereunder to be paid.

10. **Substitution of Cars.** Rex may, at any time and from time to time, replace any Withdrawn Cars or Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this

beyond  
normal wear  
and tear

lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this lease with respect to Withdrawn or Casualty Cars, or to include any Replacement Cars within the terms and provisions of this lease and of any other document under which Rex has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

11. *Abatement of Rent.* Rental payments on any Car out of service for Repair Work or other work which is Rex's responsibility under Paragraph 9 hereof shall abate from the fifth day after such Car has arrived at any repair shop for service until such Car or a Replacement Car is delivered to Lessee, to a railroad for the account of Lessee, or is otherwise ready to be returned to service. If rental is abated, then, if Rex so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the original term of this lease shall be extended for a period of time determined by dividing the sum of the number of days per Car with respect to which rental was so abated by the number of Cars subject to the Schedule on what would otherwise have been the last day of the original term hereof; provided, however, that in no event shall the period during which any Car is subject to this lease equal or exceed six years. Lessee's obligation to pay rent hereunder shall remain in effect irrespective of whether all necessary consents to the use of the Cars by carriers or other approvals now or hereafter required by tariff, Interchange Rules or other applicable laws or regulations are obtained or are cancelled or revoked.

12. *Taxes.* Rex shall be liable for and pay all Federal, State or other governmental property taxes assessed or levied against the Cars except that Lessee shall be liable for and pay such taxes when the Cars bear reporting marks and numbers other than Rex's. Lessee shall be liable at all times for and shall pay or reimburse Rex for payment of (i) all Federal, State, local and foreign sales or use taxes imposed upon or in connection with the Cars, this lease, or the manufacture, acquisition, or use of the Cars for or under this lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

13. *Liens.* Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect Rex's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

14. *Indemnities — Patent Covenants.* Lessee agrees to indemnify Rex and hold it harmless from any loss, expense or liability which Rex may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this lease, excepting only any such loss, expense or liability which arises solely from Rex's negligence. Rex agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the incorporation at the special request of Rex, upon delivery of a Car or upon the making of repairs thereto, of any invention so as to infringe any patent, except if such invention was incorporated by reason of Lessee's specifications. The indemnities and assumptions of liability herein contained shall survive the termination of this lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. *Lettering — Inventory.* At Rex's election all Cars may be marked to indicate the rights of Rex or an assignee, mortgagee, trustee, pledgee or security holder of Rex's or a lessor to Rex and may bear the following inscription: "Rex Leasing, Inc. as manager for owner/lessor. Title to this Car subject to documents recorded with the Interstate Commerce Commission." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the Schedule except upon the written direction or consent of Rex. Rex may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of Rex but not more than once every year, furnish to Rex its certified inventory of all Cars then covered by this lease.



16. *Loss, Theft or Destruction of Cars.* If any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise Rex of such occurrence. Except where Rex shall have received payment in full for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 15 days after demand by Rex, promptly make payment to Rex in the same amount as is prescribed in the Interchange Rules for the loss of such Car. This lease shall terminate with respect to a Casualty Car on the date Rex shall receive notice of a casualty occurrence with respect thereto, and thereafter Lessee shall have no further liability to Rex hereunder with respect thereto excepting accrued rent and liabilities arising or existing under Paragraphs 6, 12, 13, and 14 hereof and this Paragraph 16. Rex shall not be liable to Lessee for any consequential damages, costs or losses which result from the loss of the use of a Car for any reason, or for loss of or damage to any commodities loaded or shipped in the Cars regardless of the cause of such loss or damage.

17. *Return of Cars.* Upon the expiration or termination of this lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to Rex by delivering same to Rex at such repair shop, storage or terminal facility as Rex may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs for which Lessee is liable under Paragraph 9, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars does not bear Rex's reporting marks and numbers, Lessee shall at its expense place on any or all of the Cars such reporting marks and numbers as Rex shall designate in writing to Lessee prior to the end of the lease term. Until the delivery of possession to Rex pursuant to this Paragraph 17, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this lease as though such termination or expiration had not occurred. If Lessee is a railroad, Lessee agrees to provide storage, upon the request of Rex, without charge for any or all of the Cars for a period of 90 days from the date of expiration or termination of this lease. Nothing in this Paragraph 17 shall give Lessee the right to retain possession of any Car after expiration or termination of this lease with respect to such Car.

18. *Default.* If Lessee shall fail to make any payment required hereunder within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events Rex may at its election:

(a) terminate this lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages, for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating the lease, repossess the Cars, and relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rental due under this lease. Lessee shall pay to Rex the excess, if any, of the sum of the rental due under this lease and the expenses of retaking and reletting the Cars and delivery to the new lessee over the proceeds of any such reletting as such excess shall accrue. ~~Rex shall not be obligated to accept any lessee offered by Lessee, or to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise.~~ The election by Rex to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein

contained. The obligation to pay such excess or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the lease and the retaking of the Cars.

The remedies provided in this Paragraph 18 in favor of Rex shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in Rex's favor existing at law or in equity. ~~The Lessee hereby waives the benefit of any law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.~~

19. *Sublease and Assignment.* The right to assign this lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or lend any of the Cars without the prior written consent of Rex, which consent Rex shall not unreasonably withhold; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where (i) the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars and (ii) such sublease does not cause the owner/lessor of such Car to lose the Federal investment tax credit on such Car. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and in compliance with and expressly subject to all terms and conditions of this lease;

(b) all rights of Rex hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, without notice to or consent of Lessee. This lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease to Rex, chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by Rex provided only that, so long as Lessee is not in default under the lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. If Rex shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

for the full  
term herein  
stated.

Except in the  
case of an  
assignment  
pursuant to  
Paragraph 1  
hereof,

The making of an assignment or sublease by Lessee or an assignment by Rex, ~~other than an assignment pursuant to Paragraph 1 hereof~~, shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. *Opinion of Counsel.* Upon the request of Rex or its assignee, Lessee will deliver to Rex an opinion of counsel for Lessee, addressed to Rex or its assignee in form and substance satisfactory to counsel for Rex or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into this lease and carry out its obligations hereunder or, if Lessee is not a corporation, such analogous opinion as to Lessee's legal existence, power and authority and other matters as Rex may request;

(b) this lease has been duly authorized, executed and delivered on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms;

(c) the Cars which are then subject to the lease are leased by Lessee under and subject to the provisions of this lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

to the best  
of such  
counsel's  
knowledge,

(d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this lease or any action contemplated on its part hereunder.

21. *Notice.* Any notice required or permitted to be given pursuant to the terms of this lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Rex at: P.O. Box 968  
Englewood Cliffs, New Jersey 07632

or at such other addresses as Rex may from time to time designate by such notice in writing and to Lessee at the address first above written or any such other address as Lessee may from time to time designate by notice in writing.

22. *Warranty.* REX MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING SPECIFICALLY BUT NOT EXCLUSIVELY MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE DESIGN, WORKMANSHIP, CONDITION OR QUALITY OF CARS (OR PARTS THEREOF) WHICH HAVE BEEN APPROVED BY LESSEE HEREUNDER; and Rex shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages, on account of any matter which might otherwise constitute a breach of warranty or representation. Lessee represents that all of the matters set forth in Paragraphs 20(a), (b), (c) and (d) shall be and are true and correct at all times that any Car is subject to this lease.

except as else-  
where herein  
expressly  
provided,

and

23. *Governing Law—Writing.* The terms of this lease and all rights and obligations hereunder shall be governed by the laws of the State of New Jersey. The terms of this lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. *Counterparts.* This lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. *Severability—Waiver.* If any term or provision of this lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Rex to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. *Terminology.* In construing any language contained in this lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. *Past Due Payments.* Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to eighteen percent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

28. *Definitions.* For all purposes of this lease the following terms shall have the following meaning:

(a) "Interchange Rules"—all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of

and the matters  
set forth in  
Paragraph 20(d)  
are true and  
correct at the  
time that any  
Car becomes  
subject to  
this Lease

American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(b) "Last Date of Delivery" — the date of delivery of the last Car delivered hereunder.

(c) "Accounting Period" — each consecutive period of 12 months commencing with the date hereof and any period of less than 12 months beginning on an anniversary date of the date hereof and ending on the date this lease expires or terminates.

(d) "Repair Work" — all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with all Interchange Rules applicable to the Cars, and all preventive maintenance required in Rex's judgment to keep and maintain the Cars in good working order and repair.

(e) "Withdrawn Cars" — Cars (i) as to which this lease has been terminated by Rex because deemed by Rex to be unsuitable or uneconomical for Repair Work or (ii) which have been withdrawn from this lease pursuant to Paragraph 1(b) hereof.

(f) "Casualty Cars" — Cars which are lost, stolen, destroyed and damaged beyond economic repair.

(g) "Replacement Cars" — Cars of substantially similar description and specification to that set forth in the schedule which are substituted for Withdrawn or Casualty Cars.

29. *Benefit.* Except as otherwise provided herein, the covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of Rex and, if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

30. *Recording.* Upon request by Rex, Lessee shall join in the execution of a memorandum or short form of this lease for use in recordation with the Interstate Commerce Commission or such other recordation as Rex deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this lease including any options to extend and shall incorporate the lease by reference.

31. *Entire Agreement.* This lease constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and agreements of such parties.

32. *Arbitration.* Any dispute arising hereunder shall be settled by arbitration in New York City before a single arbitrator according to the then-obtaining rules of the American Arbitration Association and a judgment on the arbitrator's award may be entered in any court having jurisdiction thereof.

IN WITNESS WHEREOF, Rex and Lessee have duly executed this lease as of the day and year first above written.

REX LEASING, INC.

By.....

*Robert M. [Signature]*  
Ex. Vice President

[CORPORATE SEAL]

Attest:

*[Signature]*  
Asst. Secretary

LESSEE

FARMLAND INDUSTRIES, INC.

a(n).....Kansas.....corporation

By.....

*[Signature]*  
President

*[Signature]*  
LEG CH

[CORPORATE SEAL]

Attest:

*[Signature]*  
Asst. Secretary

EXHIBIT A

Exhibit A to lease dated Dec. 20, 19 79 by and between Rex Leasing, Inc., as agent and/or principal, and Farmland Industries, Inc. ("Lessee")

CERTIFICATE OF APPROVAL

\_\_\_\_\_, 19\_\_\_\_

Rex Leasing, Inc.  
P.O. Box 968  
Englewood Cliffs, New Jersey 07632

Gentlemen

The undersigned, being a duly authorized representative of Lessee, hereby approves  
One hundred (100) Cars bearing numbers as follows:

RRRX 1001 to 1100 inclusive

for the Lessee pursuant to the lease and certifies that each of said Cars conforms to, and fully complies with, the terms of said lease and is in condition satisfactory to Lessee. If Lessee is a railroad, Lessee hereby certifies that it is an interstate carrier by rail and that the Cars are intended for actual use and movement in interstate commerce.

LESSEE

FARMLAND INDUSTRIES, INC.

By \_\_\_\_\_

Sample -

*Cliff*

SCHEDULE

Schedule, consisting of one page, dated Dec. 20, 1979 to lease dated Dec. 20, 1979 by and between Rex Leasing, Inc., as agent and/or principal, and Farmland Industries, Inc. ("Lessee").

TYPE AND DESCRIPTION OF CAR: New 100 ton 4650 cubic foot steel covered hopper cars equipped with trough type hatch and gravity outlets

NUMBER OF CARS: One hundred (100)

INTERIOR EQUIPMENT: None

SPECIAL LININGS: None

PERMITTED LADING USE: Non-corrosive commodities

REPORTING MARKS AND NUMBERS: RRRX 1001 to 1100 inclusive

SPECIFICATIONS DESIGNATED BY LESSEE: None

INITIAL F.O.T. DELIVERY POINT: Massena, New York

LEASE TERM: Sixty (60) months

MONTHLY RENTAL: See rider 1.

SPECIAL TERMS: None

LESSEE

FARMLAND INDUSTRIES, INC.

By

President

REX LEASING, INC.

By

Ex. Vice President

Rider consisting of one page attached to and made part of the Schedule dated Dec., 20, 1979 to lease dated Dec. 20, 1979 by and between Rex Leasing, Inc., as agent and/or principal ("Rex"), and Farmland Industries, Inc. ("Lessee").

The monthly per Car rental provided on the Schedule shall, as to each Car delivered by the manufacturer thereof to Rex prior to December 1, 1980, be the sum of (a) a Base Rental equal to \$446.55 and (b) Additional Rental equal to  $1.15\%$  of the Car Cost Increase applicable to such Car, determined as provided below. For all periods prior to Rex's delivery to Lessee of notice of the amount of the Car Cost Increase applicable to a Car, Lessee shall pay a monthly rental for such Car equal to the Base Rental specified above although Additional Rental shall begin to accrue from the effective date of the lease with respect to such Car. As promptly as reasonably possible after completion of the manufacture of the Car, Rex will notify Lessee of the Car Cost Increase and the Additional Rental applicable to such Car as well as any amounts owed to Rex representing accrued but unpaid Additional Rental payable with respect to such Car. Lessee shall make payment of any Additional Rental so due with the next monthly rental payment due under the lease.

The Car Cost Increase applicable to any Car delivered by the manufacturer thereof to Rex prior to December 1, 1980 shall be the sum of (1) 0.859 times the difference between the final manufacturer's invoice price for such Car expressed in Canadian dollars and Canadian \$44,000, such amount representing the U.S. dollar equivalent for Cars delivered by the manufacturer thereof to Rex prior to December 1, 1980 of escalations and/or reductions in the purchase price of such Car provided for in the purchase agreement between Rex and the manufacturer thereof, (2) 0.859 times the freight cost to deliver such Car from the manufacturer's plant to the initial F.O.T. delivery point specified in the Schedule, (3) the actual amount of duties and imposts, if any, assessed or levied by the U.S. Government on the importation of the Car into the United States and (4)  $1\%$  of the amount specified in clause (1) above.

All Cars proposed to be subjected to this lease are scheduled under the applicable purchase contract with the manufacturer to be delivered on or prior to November 30, 1980. Should any Car be delivered after November 30, 1980, the Base Rental for such Car shall be greater or smaller than the Base Rental of \$446.55 provided above by an amount equal to  $1.15\%$  of the product of (a) the difference between (i) the exchange rate (U.S. dollars per Canadian dollar) available to Rex (whether on the spot market or under forward contracts to which Rex is a party) at the time of payment for such Car by or through Rex (the Available Exchange Rate) and (ii) 0.859 and (b) Canadian \$44,000; and the Additional Rental shall be  $1.15\%$  of the Car Cost Increase applicable to such Car, determined as provided in the preceding paragraph, except that the Available Exchange Rate shall be used in place of 0.859 in clauses (1) and (2) of the immediately preceding paragraph.

Lessee hereby acknowledges that there does not exist in its favor a manufacturer's warranty with respect to the Cars and further renounces and waives any and all rights and recourses which it has or may have against Marine Industrie Limitée, Sorel, Quebec, Canada, and/or its subsidiaries and/or its affiliates, arising out of the manufacture of the Cars, including but without limiting the generality of the foregoing, design, workmanship and material.

LESSEE

FARMLAND INDUSTRIES, INC.

By John Anderson

President

REX LEASING, INC.

By Robert M. Charles

Ex. Vice President



STATE OF NEW JERSEY  
COUNTY OF BERGEN ss

On this 29 day of FEB, 1980, before me personally appeared  
EXEC VICE ROBERT W GLUBER, to me personally known, who being by me duly sworn, says that he is  
the ASST Secretary of said corporation, that the seal affixed to the foregoing instrument is  
the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said  
corporation by authority of its board of directors, and they acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

Rubin Schertz  
Notary Public

RUBIN SCHERTZ  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 4, 1982

STATE OF MISSOURI  
COUNTY OF CLAY ss

On this 14<sup>th</sup> day of FEB, 1980, before me personally appeared  
JOHN ANDERSON, to me personally known, who being by me duly sworn, says that he is  
President of FARMLAND INDUSTRIES INC, KANSAS CITY MO  
and JOSEPH A. CRILES  
to me personally known to be the ASST Secretary of said corporation, that the  
seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was  
signed and sealed on behalf of said corporation by authority of its board of directors, and they acknowledged  
that the execution of the foregoing instrument was the free act and deed of said corporation.

Donald G. Rose

Notary Public  
DONALD G. ROSE  
Notary Public - State of Missouri  
Commissioned in Clay County  
My Commission Expires April 3, 1982

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF LUZERNE

:  
:  
: SS:  
:

On this the 16th day of January, 1981,  
before me personally appeared M. R. Flynn,  
known to me to be the person described in and who executed the  
foregoing instrument, and acknowledged that he executed the same  
as his free act and deed.

Donna M. Oley

DONNA M. OLEY, Notary Public  
Wilkes-Barre, Luzerne County, Pa.  
My Commission Expires Dec. 31, 1983

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF LUZERNE

:  
:  
: SS:  
:

On this the 16th day of January, 1981,  
before me personally appeared James B. Mileski,  
to me personally known, who, being by me duly sworn, says that he  
is the vice president of FIRST EASTERN BANK, N.A.,  
that the seal affixed to the foregoing instrument is the cor-  
porate seal of said corporation, that said instrument was signed  
and sealed on behalf of said corporation by authority of its  
Board of Directors and he acknowledged that the execution of the  
foregoing instrument was the free act and deed of said corporation.

Donna M. Oley

DONNA M. OLEY, Notary Public  
Wilkes-Barre, Luzerne County, Pa.  
My Commission Expires Oct. 29, 1983